COMMISSION DECISION (EU) 2016/633

of 23 July 2014

on State aid SA.33961 (2012/C) (ex 2012/NN) implemented by France in favour of Nîmes-Uzès-Le Vigan Chamber of Commerce and Industry, Veolia Transport Aéroport de Nîmes, Ryanair Limited and Airport Marketing Services Limited

(notified under document C(2014) 5078)

(Only the French text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof ([1]),

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having regard to Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes ([2]),

Having called on interested parties to submit their comments pursuant to those articles ([3]) and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By letter dated 26 January 2010, the Commission received a complaint about advantages that the airline Ryanair Limited ('Ryanair') was allegedly enjoying at a number of regional and local French airports. In the case of Nîmes Airport, the complaint also mentioned financial support allegedly received by the successive bodies operating the airport, Nîmes-Uzès-Le Vigan Chamber of Commerce and Industry (the 'CCI') and Veolia Transport Aéroport de Nîmes ('VTAN').

(2) By letter dated 16 March 2010, the Commission sent France a non-confidential version of the complaint and asked it for explanations concerning the measures at issue. France sent answers by letters dated 31 May and 7 June 2010.

(3) By letter dated 2 November 2011, the complainant sent additional information in support of its complaint. The Commission forwarded this information to France and asked it for additional information by letter dated 5 December 2011. On 22 December 2011 France requested an extension of the deadline for replying, to which the Commission agreed by letter dated 4 January 2012. France submitted its comments and answers by letter dated 27 February 2012.

(4) By letter dated 26 April 2012, the Commission informed France of its decision to initiate the procedure (the 'opening decision') under Article 108(2) of the Treaty on the Functioning of the European Union (TFEU) on the potential aid to the CCI, VTAN and Ryanair.

([1]) With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the Treaty on the Functioning of the European Union ('TFEU'). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty, where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of 'Community' by 'Union', 'common market' by 'internal market' and 'Court of First Instance' by 'General Court'. The terminology of the TFEU will be used throughout this Decision.

([2]) OJ L 240, 24.8.1992, p. 8.

([3]) OJ C 241, 10.8.2012, p. 11.

(5) By letters dated 29 May and 28 June 2012, France requested two extensions of the deadline for replying to the additional information requests made in the opening decision. On 31 July 2012 France submitted its comments together with the information and documents requested by the Commission in the opening decision.

(6) The Commission decision was published in the *Official Journal of the European Union* ([4]) on 10 August 2012. The Commission invited interested parties to submit their comments on the measures in question within one month of the date of publication.

(7) The Commission received comments from interested parties. On 24 September 2012 the CCI, VTAN and the Syndicat Mixte pour l'aménagement et le développement de l'aéroport de Nîmes-Alès-Camargue-Cévennes ('SMAN') jointly submitted their comments. Airport Marketing Services Limited ('AMS') submitted its comments on 3 October 2012. Ryanair likewise submitted a series of comments on 3 October 2012. Moreover, on 20 July 2012, 10 April 2013, 20 December 2013, 31 January 2014 and 7 February 2014, Ryanair submitted general comments common to all the State aid cases initiated by the Commission with regard to Ryanair.

(8) By letters dated 24 June 2012, 3 May 2013 and 9 January 2014, the Commission sent France the comments made by interested parties. The Commission gave France the opportunity to reply to these comments. France replied to these letters by its own letters dated 13 July 2012, 16 November 2012, 3 May 2013 and 3 February 2014. In its letter of 13 July 2012, it informed the Commission that the comments received required no comment from France, apart from those already submitted on Marseille airport. Moreover, France informed the Commission that it did not wish to reply to the comments made by third parties.

(9) By letter dated 18 October 2012, the Commission asked France to provide further information. France replied on 3 December 2012.

(10) By letter dated 23 December 2013, the Commission again asked France to provide further information. By letter dated 24 December 2013, France requested an extension of the deadline for replying. The Commission agreed to this extension by letter dated 6 January 2014. France requested a further extension of the deadline by letter dated 5 February 2014. The Commission agreed to this extension by letter dated 11 February 2014. By letter dated 19 February 2014, France submitted partial answers. In view of the missing information, the Commission sent a reminder to France by letter dated 19 March 2014. France replied by letter dated 10 April 2014.

(11) By letter dated 20 March 2014, the Commission again asked for further information. France replied by letter dated 25 April 2014. In view of the missing information, the Commission sent a reminder to France by letter dated 13 May 2014. France replied by letter dated 26 May 2014. Finally, the Commission requested further information by letter dated 23 June 2014. France replied by letter dated 1 July 2014.

(12) The Commission sent letters to France and the interested third parties that had submitted comments informing them of its intention to assess the compatibility of the aid measures in question with the internal market based on the 'Guidelines on State aid to airports and airlines' ([5]) ('the new Guidelines'). The Commission invited the recipients of these letters to comment in this respect, if they so wished. In addition, on 15 April 2014 a notice was published in the *Official Journal of the European Union* ([6]) inviting France and interested third parties to submit their comments in this respect.

(13) Air France submitted its comments in this respect on 25 April 2014. Ryanair did likewise on 27 March 2014 and VTAN on 23 April 2014. In addition, the non-governmental organisation Transport & Environment submitted its comments on 12 May 2014. These various comments were forwarded to France, which did not comment on them.

([4]) See footnote 3.
([5]) Communication from the Commission — Guidelines on State aid to airports and airlines (OJ C 99, 4.4.2014, p. 3).
([6]) OJ C 113, 15.4.2014, p. 30.

2. **FACTS**

2.1. *AIRPORT CHARACTERISTICS AND TRAFFIC*

(14) Nîmes-Garons airport ('Nîmes airport') lies 12 km to the south of Nîmes, which is the main town in the department of Gard, within the Languedoc-Roussillon region of France. This airport is open to national and international commercial traffic. Nîmes airport is approximately 60 km from the airports of Montpellier and Avignon, 90 km from Marseille-Provence airport and 120 km from Béziers-Cap d'Agde airport.

(15) According to France, the main runway, which measures 2 040 m × 45 m, is capable of handling Code C aircraft (A319, A320, A321, B737-800) without any restrictions for European legs. France puts the airport's theoretical capacity at a maximum of 700 000 passengers.

(16) Until 2011 Nîmes airport was mainly a military aerodrome, with civil aviation forming only a secondary activity. It therefore had an airbase and a civilian base. The airbase was closed on 2 July 2011, since when Nîmes airport has been mainly a civilian airport, with its military use becoming secondary.

(17) From 1965 to 2000, the only passenger traffic was on the Nîmes/Paris route operated by Air France. However, use of this route fell when a TGV high-speed rail service started operating. In November 2001 Air France stopped operating the Nîmes/Paris route. The airline Air Littoral took over this route, which it operated until July 2003.

(18) Since June 2000 Nîmes airport has been used by the airline Ryanair, initially for one scheduled route to London Stansted. In 2005 the London Stansted route was replaced by a route to London Luton, with a new route to Liverpool being launched. In 2006 Ryanair started operating two new routes: one to Charleroi and the other to East Midlands. From 2007 the number of flights to Liverpool was drastically cut, and the route to East Midlands was permanently withdrawn in 2009. Ryanair currently operates international flights from Nîmes to Liverpool, London Luton, Charleroi and Fez.

(19) Ryanair became the main operator at Nîmes airport in 2001, and since 2003 has been the only operator offering scheduled services from this airport.

(20) Nîmes airport's passenger traffic in recent years is summarised in Table 1 in this recital.

Table 1

Traffic at Nîmes airport (1999-2012) by number of passengers

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Total passengers	**297 150**	**277 521**	**319 378**	**231 122**	**134 444**	**156 581**	**206 128**	**226 887**	**225 701**	**224 458**	**180 027**	**176 521**	**192 474**	**184 850**	**195 319**

2.2. *SUCCESSIVE AIRPORT OPERATORS AND OWNERS*

(21) Operation of the civilian area of the airport was initially entrusted to the CCI by Order of 15 March 1965 ('the 1965 Order') in the form of a public equipment concession for a period of 60 years from 1 January following the concession's being granted, i.e. to 1 January 2026. The concession was supplemented by an order authorising temporary occupation ('AOT') of approximately 6 ha of additional land, granted on 12 November 1986 ([7]). The state terminated the concession on 31 January 2006 ([8]).

([7]) Order authorising temporary occupation of 12 November 1986.
([8]) Interministerial order of 31 January 2006.

(22) A schedule of conditions was annexed to the 1965 Order. This schedule set out the conditions under which the CCI was to establish, equip, maintain and operate the structures, buildings, facilities and equipment. According to the AOT, the assets making up the aerodrome's equipment belonged to the state. However, any alterations that needed to be made to the structures and facilities were the responsibility of the CCI. The CCI had to pay an annual fee of FRF 2 000 (approximately EUR 300). The AOT also stipulated that the airport was 'assigned primarily to the French Navy (Airbase) and secondarily to the [CCI]'.

(23) The CCI is a member of the network of chambers of commerce and industry. In France, chambers of commerce and industry are public administrative bodies. In essence, they represent the general interests of trade, industry and services within their catchment area. Their tasks and powers are laid down by law. These chambers are subject to the administrative and financial scrutiny of the state, through the Minister for Finance and Infrastructure and the Minister for Planning and Local Administration, each acting within their area of responsibility. According to Article R.712-2 of the Commercial Code, 'regional chambers of commerce and industry and local chambers of commerce and industry shall be supervised by the regional prefect, assisted by the regional public finance officer'. The supervisory authority must therefore be informed of certain important decisions specified in the regulations (regarding, for example, budget, recourse to borrowing, granting of guarantees to third parties, transfers, acquisitions or extensions of financial holdings in civil or commercial companies, etc.). Such acts may be implemented only after having been notified to the supervisory authority, which may object to them. Chambers of commerce and industry are governed by an assembly elected from among industry representatives in their catchment area.

(24) The CCI kept separate accounts for the management of the civilian area of the airport, and the latter's operating activity was recorded in a separate account throughout this period. In order to distinguish between the activities of the CCI's general arm and the airport management activity, the part of the CCI operating the civilian area of Nîmes airport will be referred to as the 'CCI-Airport' in this Decision.

(25) From 1 February 2006 responsibility for the equipment, maintenance, operation and development of the civilian area of the aerodrome was entrusted to the SMAN through an agreement dated 31 January 2006. Under this agreement, the civilian area of the airport was placed at the disposal of the SMAN, with the state retaining ownership of the assets.

(26) The SMAN is a public body ([9]) created by Order of the Prefect of the Gard Department of 9 December 2005. It brings together ([10]) the Departmental Council of Gard ('the CGG'), the Communauté d'Agglomération de Nîmes Métropole (the 'CANM'), and the Communauté d'Agglomération d'Alès Cévennes (the 'CAAC'). It is responsible for equipping, maintaining and managing, particularly including operating and developing, civilian airport infrastructure ([11]).

(27) Between 1 February 2006 and 31 December 2006, the SMAN temporarily entrusted the operation of the airport to the CCI through a public service delegation ([12]). It therefore specified how the aerodrome was to be equipped, developed, maintained and managed. In coordination with the CCI-Airport, it also made the decisions and provided the financing needed to develop the aerodrome in line with the Order creating the SMAN and the public service delegation agreement signed with the CCI-Airport. For its part, the CCI-Airport was to make the alterations resulting from the work that it had undertaken, even if those alterations affected structures or facilities situated outside the civilian area. Under the delegation agreement, the CCI was not due to pay any fees in exchange for using the infrastructure.

([9]) The French authorities have explained that the legal form of the SMAN, as laid down by Articles L.5721-1 et seq. and R.5721-1 et seq. of the General Local and Regional Authorities Code, in particular allows local authorities and other public bodies to come together to operate public services that are important to each of them.

([10]) The SMAN is managed by a board consisting of representatives of its members. The CGG has five representatives, the CANM has seven representatives and the CAAC has three representatives.

([11]) Order creating the SMAN of 9 December 2005.

([12]) Public service delegation agreement of 31 January 2006.

(28) Following an invitation to tender procedure, in which there were two competing tenders, the SMAN chose to subcontract the operation of the aerodrome to the company Veolia Transport under a public service delegation agreement (the 'CDSP') that took effect on 1 January 2007. This company created a wholly owned subsidiary, Veolia Transport Aéroport de Nîmes, which performed the CDSP in the place of its parent company. The CDSP exclusively entrusted to the delegatee, at its own risk, the operation, maintenance and servicing of the civilian area of the airport, its land, structures, buildings, infrastructure, equipment and systems, the development of traffic and the development of services for the handling of civilian aircraft for passenger and freight traffic, for civilian aircraft flight training and for those undertakings established at the site. The initial term of the Veolia Transport delegation agreement was five years, which was then extended to 31 December 2012 ([13]).

(29) The SMAN organised a new public service delegation procedure, and a new operating agreement was signed on 14 December 2012 between the SMAN and the Canadian group SNC-Lavalin. The new delegatee has been operating the airport since 1 January 2013.

(30) Following the decision to close the airbase, the airport's management was transferred, without charge, to the SMAN from 1 July 2011 ([14]) for a term of 50 years. The SMAN is therefore the airport manager and concession authority for its operation, with the state remaining the owner.

3. **DESCRIPTION OF THE MEASURES**

3.1. *MEASURES SUBJECT TO THE FORMAL INVESTIGATION PROCEDURE*

(31) The measures subject to the formal investigation procedure involve various agreements signed over this same period by the successive airport managers with Ryanair, both directly and through its subsidiary AMS, and also financial contributions made by various public entities and authorities to the airport operators from the year 2000 to the opening of the formal investigation procedure.

3.2. *FINANCIAL SUPPORT FOR THE AIRPORT OPERATORS*

3.2.1. FINANCING OF COSTS ASSOCIATED WITH TASKS REGARDED AS SOVEREIGN TASKS WITHIN NÎMES AIRPORT — NATIONAL SYSTEM FOR FINANCING SOVEREIGN TASKS IN FRENCH AIRPORTS

(32) Various tasks performed by the successive managers of Nîmes airport relating to air traffic safety, security or environmental protection were financed by the public authorities between 2000 and 2012. This funding falls within the scope of the formal investigation procedure.

(33) In this connection, France has referred to the general system for financing sovereign tasks in French airports, laid down in national law and described in recital 36 et seq.

(34) This system is based on a tax — the airport tax — and an additional financing instrument. The background to and rules governing these instruments, and the tasks financed by them, are described in recital 37 et seq.

([13]) Decision of the SMAN Board of 30 June 2011.

([14]) Order of the Minister for Defence of 30 June 2011 on the transfer of management. Furthermore, an agreement of 30 June 2011 signed between the state and the SMAN lists the assets placed at the disposal of the SMAN and details those assets for which temporary occupation authorisations have been granted to third parties, with or without real rights.

(35) In 1998 the Council of State ruled in the *SCARA* judgment ([15]) that safety and security tasks within airports were sovereign tasks for which the state was responsible and that could not therefore be funded by airport users through fees. Following this judgment, Act No 98-1171 of 18 December 1998 on the organisation of certain air transport services and Article 136 of Act No 98-1266 of 30 December 1998 (Finance Act for 1999) ([16]) introduced the airport tax as from 1 July 1999. This is a specific tax in the sense that its proceeds can be used only to finance certain expenditure, in this case the costs of tasks that France regards as sovereign within airports. The above legal provisions also introduced an additional instrument to finance such tasks. The tasks financed by these instruments and the rules governing the airport tax and the additional financing instrument are set out below.

(36) The French legislation, together with more detailed regulatory provisions, sets out precisely which tasks can be financed by the airport tax. They are aircraft rescue and firefighting, wildlife hazard prevention ([17]), screening of hold baggage, passengers and cabin baggage, control of public access points to the restricted area ([18]), environmental protection measures ([19]) and automatic border control using biometric identification. The reference to automatic border control using biometric identification was introduced into the legislation in 2008. Otherwise, the tasks eligible for financing by the airport tax have remained the same since this scheme was introduced and correspond to the tasks identified by the *SCARA* judgment. Various national and European regulations clarify the obligations of airport operators in terms of carrying out these tasks. For example, with regard to aircraft rescue and firefighting, the regulations precisely define the human and physical resources to be provided depending on the characteristics of the airport.

(37) For a given airport, the airport tax is payable by any airline using the airport. It is based on the number of passengers and weight of freight and mail loaded by the airline. The rate of airport tax per passenger or tonne of freight or mail is set annually, airport by airport, according to the predicted costs of carrying out the tasks financed by the scheme.

(38) Every year airport operators draw up an annual statement of costs and traffic. These statements set out, for the previous year, the recorded levels of traffic and the costs of performing the safety and security tasks ([20]), as well as the amounts collected through the airport tax and the additional instrument for financing these tasks. They also contain predictions of traffic, costs and revenue in relation to the safety and security tasks for the current year and the next two years. These statements are checked by the administrative authorities, which can also carry out on-site inspections. The rate of the tax is then set on this basis by an interministerial order.

(39) As the tax rate calculations are based on predicted cost and traffic data, an *ex post* adjustment mechanism has been introduced to ensure that the proceeds from the airport tax, plus the financing provided under the additional instrument described in recital 40, where applicable, do not exceed the costs actually incurred in carrying out the tasks concerned. The costs in question include the operating and staff costs incurred in carrying out these safety and security tasks, depreciation on investments made in connection with these tasks, and the share of the overheads related to these tasks ([21]). Operators must keep multiannual accounts showing the revenue from the airport tax and the additional financing instrument, and the costs incurred in carrying out the tasks concerned. When a positive balance is reported, this is added to the cumulative accounts from previous years, which may result in a positive or negative balance. This balance is taken into account when setting the tax rate for the following year. In addition, any positive balance carries financial charges payable by the operator.

([15]) Judgment of the Council of State of 20 May 1998 *Syndicat des Compagnies aériennes autonomes* ('*SCARA*').
([16]) Now codified in Article 1609 *quatervicies* of the General Tax Code.
([17]) Wildlife hazards particularly include bird hazards, which involve collisions between aircraft and birds that may threaten the safety of persons and goods on board aircraft.
([18]) Performance of this task may include, for example, installing and maintaining barriers delimiting the public and restricted areas or installing a video surveillance system around the restricted area.
([19]) This task includes noise measures, in correlation with flight paths if appropriate, and air and water quality control in the areas surrounding airports.
([20]) Tasks eligible for financing by the airport tax, as described above.
([21]) The overheads mainly stem from support functions such as human resources management, financial affairs, financial audit, purchases, non-exclusive IT systems, legal office, general services, general management, accounting functions and management control.

(40) From the outset, the airport tax financing instrument has had to be supplemented by an additional financing instrument. This is because safety and security costs are not proportional to the volume of air traffic, unlike the airport tax revenue. It was therefore clear that, at airports with low traffic volumes, the airport tax rate would have needed to be set at a high level, deemed to be barely affordable for users, in order to meet the safety and security costs. For these airports, provision was therefore made for the airport tax to be set at a level below that required to cover the costs and for an additional financing instrument to be used, as necessary, to finance those tasks eligible for financing by the airport tax.

(41) Various additional financing instruments have been used. To start with, the French authorities used a specific fund, the 'fonds d'intervention pour les aéroports et le transport aérien' ('FIATA') or Intervention Fund for Airports and Air Transport, set up alongside the airport tax by the aforementioned Act No 98-1266 of 30 December 1998. This fund, financed by a share of the civil aviation tax, succeeded the 'fonds de péréquation des transports aériens' ('FPTA') or Air Transport Adjustment Fund, which had initially been reserved for financing routes supporting regional development. The FIATA financing covered the same tasks as the FPTA financing and was extended to those tasks covered by the airport tax in order to supplement the latter for small airports. In essence, the FIATA tasks were split into two distinct 'parts': an 'airport' part providing supplementary cover for safety and security tasks at small airports, and an 'air transport' part providing subsidies for routes supporting regional development. Decisions to pay the FIATA subsidies providing additional financing for the safety and security tasks were taken following an opinion from the FIATA committee managing the 'airport' part.

(42) In 2005 the FIATA was abolished and, for two years, the corresponding financing was provided directly through the state budget according to the same operating principles, particularly an opinion from a management committee. In 2008 the state replaced this arrangement with an increase in airport tax, which means that this tax is set at a rate higher than what is necessary to cover the safety and security costs at certain airports. The surplus thus created is redistributed among the smallest airports in order to supplement their revenue from the airport tax.

(43) As indicated above, the annual statements of airport operators, which are checked by the administrative authorities, give the predicted and recorded costs and the predicted and recorded revenue from both the airport tax and the additional financing instrument. Likewise, the annual accounts kept by operators, based on which the balance of actual costs and revenue is calculated, which, if positive, results in a reduction in the airport tax and financial charges being payable by operators, include both the airport tax proceeds and the financing received through the additional financing instrument. The statement, checking and *ex post* adjustment mechanism intended to prevent the payment of public resources in excess of the costs actually incurred therefore applies to both the airport tax and the additional financing instrument.

(44) This national system applies to Nîmes airport. However, when the airbase was operating, the tasks covered by the system described in the above recitals were partly carried out by the operator of that airbase. The costs therefore incurred were only partly rebilled to the civilian operator according to the terms of the agreement defining the distribution between the civilian operator and the military operator of the investment and operating costs for those facilities and services that were jointly used. This partial rebilling took account of the fact that most of the activity at the airport was military. The share of the costs paid by the civilian operator was then compensated under the sovereign tasks financing system described in this section.

(45) Following the closure of the airbase on 1 July 2011, VTAN took over all the airport safety and security tasks for which civilian airport operators are responsible under French law, with the associated costs being compensated under the system set out above.

(46) Furthermore, the Commission noted in the opening decision that, as Nîmes airport had mainly been a military aerodrome until July 2011, certain investments in joint infrastructure, notably the runway, had been made under the control of the Ministry of Defence.

3.2.2. FINANCIAL SUPPORT FOR THE CCI-AIRPORT

(47) The CCI-Airport operated Nîmes airport until 31 December 2006.

3.2.2.1. ***Contractual framework***

(48) Under the 1986 temporary occupation authorisation ([22]), the CCI had to pay a fee of FRF 2 000 per year to the state, which owned the infrastructure. Aside from this stipulation, no other financial transfer benefiting the CCI-Airport was included in this contractual framework, which remained in force until 1 February 2006.

(49) On 1 February 2006 the state placed the airport infrastructure in the civilian area at the disposal of the SMAN and authorised the latter to organise the airport's civilian activity, subject to the powers of the Ministry of Defence. The agreement signed on 31 January 2006 between the state and the SMAN requires the SMAN, or the third-party operator appointed by the latter, to develop and finance the movement areas, stands and equipment storage areas within the civilian area ([23]).

(50) In this context, a public service delegation agreement was signed between the SMAN and the CCI in order to entrust the latter with the operational management ([24]) of the airport between 1 February and 31 December 2006, which was the time needed to organise an invitation to tender procedure in order to select a new operator. Article 6 of this agreement required the airport operating costs to be covered by the CCI, whilst the investment expenditure was funded by the SMAN. To cover the airport operating costs, it was stipulated that the operator could have recourse to contributions from other relevant public bodies ([25]). An annual fee of one euro was to be paid to the SMAN by the CCI ([26]).

3.2.2.2. ***Investments in the civilian area of the airport***

(51) The French authorities have set out all the investments made in the civilian area of the airport by the CCI-Airport over the 1970-2006 period, which totalled EUR 19 447 268. These investments increased the size of the passenger terminal. Alterations were particularly made to the concourse, check-in area, departure lounge, passenger arrivals area and administrative area ([27]). The aim was to adapt the airport so that it could handle 600 000 to 800 000 passengers per year. This work was paid for in full by the CCI-Airport through self-financing and borrowing.

(52) France has also stressed that, during the period of operation by the CCI until 1 February 2006, the entire airport, except for the passenger terminal, was used for military activities. The runway and control tower, for example, were built and used for military aviation. These existing infrastructures were subsequently used for commercial aviation, but on a secondary basis to the military activity. The Ministry of Defence did make investments in these infrastructures. However, these investments were not intended to develop or maintain the airport's commercial activities, but rather its military activities, and in this respect they were not made or assumed by the civilian operator. On the other hand, the CCI-Airport paid the military operator a contribution corresponding to its share of the costs associated with the joint infrastructure (mainly the runway and control tower) and the joint services provided (mainly air navigation and firefighting services) ([28]).

3.2.2.3. ***Operating subsidies***

(53) The CCI-Airport's main accounting and commercial data for the 1999-2005 period are summarised in Table 2 in this recital.

Table 2

Key figures for the CCI-Airport (thousand EUR) ([1])

	1999	2000	2001	2002	2003	2004	2005
Ryanair revenue	[…] (*)	[…]	[…]	[…]	[…]	[…]	[…]
Total revenue	2 664	2 943	3 328	3 522	2 747	2 665	4 314
Payments to Ryanair	[…]	[…]	[…]	[…]	[…]	[…]	[…]

([22]) Article 31 of the 1965 concession agreement.
([23]) Article 8 of the state-SMAN delegation agreement of 1 February 2006.
([24]) Preamble to the state-SMAN delegation agreement of 1 February 2006.
([25]) Article 27 of the state-SMAN delegation agreement of 1 February 2006.
([26]) Article 29 of the state-SMAN delegation agreement of 1 February 2006.
([27]) France's comments on the opening decision, pp. 8 and 13.
([28]) France's comments on the opening decision, p. 8.

	1999	2000	2001	2002	2003	2004	2005
Total expenditure	2 933	3 217	3 746	4 318	5 171	4 553	4 957
Result	- 269	- 274	- 419	- 796	- 2 424	- 1 887	- 643
Assets	8 956	8 333	7 714	7 145	7 383	6 641	8 026
Equity	3 844	3 357	2 729	1 805	- 1 093	- 3 491	- 4 341
Final balance	10 831	10 258	9 419	8 522	8 869	7 924	10 729

([1]) According to the letter from France of 27 February 2012. The 'Ryanair revenue' row corresponds to payments made by the airline to the operator, whilst the 'Payments to Ryanair' row corresponds to payments made by the CCI-Airport to Ryanair and its subsidiary AMS.
(*) Business secret.

(54) The Commission indicated in the opening decision having identified, in the CCI-Airport financial statements for the years 2000 to 2006, accounting entries relating to operating subsidies, for which the amounts are given in Table 3 in this recital:

Table 3

Amounts of the operating subsidies received by the CCI between 2000 and 2006 (in EUR), as identified in the opening decision

	State	Region	CGG	Municipalities	Other	Total
2000		8 944			13 993	22 937
2001			28 314	15 299		43 613
2002	46 000			16 518		62 518
2003				12 603	400 331	412 934

	State	Region	CGG	Municipalities	Other	Total
2004				3 694	39 587	43 281
2005			500 000	850 000	13 758	1 363 758
2006					200 000	200 000
Total	**46 000**	**8 944**	**528 314**	**898 114**	**667 669**	**2 149 041**

(55) France has given the following explanations for these various amounts. In 2005 the CCI-Airport received subsidies of EUR 250 000 from the CAAC, EUR 600 000 from the CANM and EUR 500 000 from the CGG to cover its operating deficit ([29]). In 2006 the CCI-Airport received a payment of EUR 200 000 from the general arm of the CCI to cover its operating deficit ([30]). On the other hand, according to France, none of the other amounts indicated in Table 3 in the above recital correspond to financial support from public authorities for the CCI-Airport's economic activities. According to France:

— the sums of EUR 22 937 and EUR 43 613 indicated respectively for the years 2000 and 2001 were allocated to the operation of the shuttle between the centre of Nîmes and the airport,

— the sum of EUR 62 518 indicated for the year 2002 corresponds to financing for the shuttle (EUR 16 518) and a FIATA subsidy (EUR 46 000) under the national system for financing sovereign tasks, as explained previously,

— the sum of EUR 412 934 indicated for the year 2003 corresponds to financing for the shuttle (EUR 12 603), a FIATA subsidy (EUR 14 218) and financing provided by the state (EUR 386 103) to cover sovereign safety tasks falling within the scope of the airport tax and the FIATA,

— the sum of EUR 43 281 indicated for the year 2004 corresponds to financing for the shuttle (EUR 3 694) and a FIATA subsidy (EUR 39 587),

— the sum of EUR 13 758 indicated in the 'other' column for the year 2005 corresponds to a FIATA subsidy.

(56) The shuttle is operated by an external service provider with financial assistance from various public authorities. It is not under the control of the CCI-Airport and does not fall within the scope of its activities.

(57) France has also made clear that, except for the payment of EUR 200 000 from 2006, referred to in recital 55, the CCI did not make any transfer between the general arm's accounts and the airport arm's accounts during the term of the concession. However, it notes that repayable advances were made. The flows and reserves ([31]) of these advances are summarised in Table 4 in this recital.

([29]) The first two amounts are combined in the 'municipalities and groupings of municipalities' column.
([30]) This amount appears in the 'other' column of the above table.
([31]) As recorded on the liabilities side of the CCI-Airport balance sheet under 'Inter-establishment advances'.

Table 4

Advances from the CCI's general arm to its airport arm (EUR) ([1])

	Advance received	Advance reserve at year-end
1999	- 13 157	2 740 804
2000	- 43 669	2 697 135
2001	0	2 697 135
2002	420 074	3 117 210
2003	1 752 663	4 869 873
2004	1 429 624	6 299 497
2005	500 000	6 799 497
2006	2 938 660	9 738 157

([1]) According to the letter from the French authorities of 27 February 2012.

(58) The reserve of advances from the CCI's general arm was automatically converted to subsidy when the public equipment concession was terminated on 31 January 2006 ([32]). As allowed by the terms of the 1965 concession agreement ([33]), the state terminated this concession early in 2006. It then applied Article 48 of the 1965 concession agreement, under which, at the end of the concession, 'the state shall reimburse to the Chamber of Commerce those advances made by the latter from its own resources etc.'

(59) Finally, the Commission noted in the opening decision that, for the 2000-2006 period, the CCI-Airport had not entered any costs under the 'Contribution to the manager's overheads' heading in its accounts. In the opening decision, the Commission assumed that the CCI's general arm had not billed any overheads associated with the use of its resources for the management, for example administrative or accounting management, of the airport arm. However, in its reply to the opening decision, France indicated that all the services common to the CCI's various arms, including the CCI-Airport, were rebilled, with the contribution of each arm being determined based on an allocation key that was itself based on the volume of services used by each arm of the CCI. For example, with regard to the IT overheads, each arm bore the relevant costs according to the number of computers connected and used by the arm concerned. France provided details of the airport arm's contributions to the overheads between 2000 and 2006, item by item (management control, staff management, accounting, IT, supplies, insurance, mail).

3.2.3. FINANCIAL SUPPORT FOR VTAN

3.2.3.1. ***Contractual framework and operating subsidies***

(60) The company Veolia Transport was entrusted with operating Nîmes airport from 1 January 2007. The extent of its responsibilities and the operating conditions were defined by the SMAN, as the delegating authority, in the CDSP. This agreement covered the operation, maintenance and servicing of the civilian area of the airport, the development of traffic and the development of services for the handling of civilian aircraft and for those undertakings established at the site.

([32]) On 8 August 2006 the CCI claimed for reimbursement of the advances, totalling over EUR 9 million.
([33]) Article 46 of the 1965 concession agreement.

(61) Subsequently, and in accordance with Article 1a of the CDSP, Veolia Transport set up the company VTAN to perform the CDSP. The parent company of VTAN, Veolia Transport, was also authorised to engage in other commercial activities 'related' ([34]) to the task of operating the airport.

(62) In accordance with Article 27 of the CDSP, a flat-rate contribution was paid by the SMAN to VTAN every year to ensure that the airport's operation was financially stable. This contribution was calculated as the difference between the delegatee's commitment in terms of the predicted level of expenditure (total costs plus net margin before tax) and its commitment in terms of the predicted level of revenue. This contribution was fixed, except for annual indexation based on a formula set out in Article 27.6 of the CDSP. Under this agreement, the flat-rate contribution was set at EUR [1,2-1,5] million per year net of VAT (2005 euro value) in a reference scenario corresponding to the operating conditions prevailing in the second quarter of 2006.

(63) However, the CDSP stipulated that the flat-rate contribution would change if VTAN found itself in a 'downturn scenario', defined by specific criteria set out in the CDSP. This downturn scenario corresponded to a drop in activity resulting in a change to the rotation schedule for aircraft on scheduled routes, itself leading to the airport's second staff team being axed and the predicted expenditure therefore falling. According to the CDSP, in this downturn scenario, the flat-rate contribution would be reduced to EUR [1,0-1,3] million net per year.

(64) Moreover, the CDSP stipulated that, if, for a given year, the pre-tax margin of the airport's operation was higher than the margin initially set, i.e. if the activity's finances were in better shape than predicted and undertaken, [30 %-45 %] of the difference in the margin would be deducted from the flat-rate contribution. Taking into account the additional corporation tax of 10 % of the difference in the pre-tax margin, this reduction formula allowed the savings not initially predicted to be equally shared between the SMAN and VTAN.

(65) On 27 January 2010 an initial amendment was made to the CDSP ('Amendment No 1') due to VTAN being unable to collect the fee associated with the temporary occupation authorisation for a factory situated in the airport zone (the SGAÏ factory), which was an unknown factor at the time when Veolia drew up its tender. Amendment No 1 to the CDSP increased the flat-rate contribution by EUR [20 000-50 000].

(66) A second amendment ('Amendment No 2') was signed on 20 July 2010 with a view to committing VTAN to renewing the airport's air-conditioning system. This amendment stipulated that the SMAN would compensate VTAN for the undepreciated value of the equipment at the end of the delegation.

(67) A third amendment ('Amendment No 3') to the CDSP was signed on 23 March 2011. This introduced the possibility of the flat-rate contribution being increased in the amount of the subsidies received by the SMAN from other public authorities. It also stipulated that the SMAN would transfer to VTAN the subsidy received from the Languedoc-Roussillon Region under the agreement signed with that authority to support the development of tourist traffic through low-cost air travel. This subsidy amounted to EUR [100 000-300 000] for 2009. The SMAN took the view that VTAN had incurred expenditure in supporting the development of tourist traffic and therefore wanted to increase the flat-rate contribution by the amount of the subsidy received.

(68) France has indicated that this subsidy was intended to cover the costs incurred by VTAN in dealing with the reduction in traffic triggered by Ryanair's decision in March 2009 to no longer operate flights from Nîmes airport to East Midlands and to reduce the number of flights to Liverpool and London Luton.

(69) According to VTAN, the expenditure supported by this public relations subsidy did not in any way finance the additional advertising with Ryanair's subsidiary (AMS), but was targeted at the public service mission of developing tourist traffic and promoting the local economy. In particular VTAN recruited a sales manager who was in charge of public relations development and marketing as well as efforts to develop air traffic through numerous B2B meetings at airline offices, several email campaigns and participation in air transport trade shows and forums (such as the BMT trade show in Naples, Italy, which enabled contact with five Italian tour operators) directly aimed at foreign customers.

([34]) Articles 1 and 1a of the CDSP.

(70) On 8 April 2011 an agreement was signed between the SMAN and VTAN to define a coordinated approach to the commitment of the expenditure needed to maintain aviation activity after 1 July 2011, the date when the airbase closed, which required the governance of the entire airport to be reviewed.

(71) On 2 July 2011 the state transferred to the SMAN part of the former military area as well as the tasks and responsibilities previously assumed by the Ministry of Defence. This transfer had the effect of altering the area and responsibilities entrusted to VTAN under the CDSP. In this context, on 30 June 2011 the SMAN and VTAN signed a new amendment to the CDSP ('Amendment No 4'), which, on the one hand, extended the initial term of the CDSP by one year and, on the other hand, altered the obligations of the delegatee and the terms of its compensation. From that date, VTAN became responsible for the activities previously carried out by the Ministry of Defence, except for control over aviation safety. It also had to purchase the equipment in the military area and make the investments in this infrastructure that were deemed necessary.

(72) In view of these new operating costs and additional investments, a specific public contribution estimated at EUR [300 000-600 000] for 2011 and equipment subsidies were granted to the delegatee. The equipment subsidies were estimated at EUR [900 000-1 400 000] (EUR [300 000-500 000] for 2011 and EUR [600 000-900 000] for 2012). At the end of the delegation, a readjustment was to be made in order to bring the payments into line with the expenditure actually incurred by VTAN and the taxes actually received by the SMAN. France asserts that the aforementioned subsidy was intended to cover investments in sovereign activities and certification work on the airport that was not anticipated at the time when the public service delegation was granted ([35]).

3.2.3.2. ***Investments in the airport zone***

(73) The CDSP stipulated that the operator was responsible for only some of the investments ([36]). VTAN therefore had to finance the investments involved in taking over the restaurant equipment, amounting to EUR [150 000-350 000], developing the airport's shops, and purchasing the equipment needed for entertainment in the terminal. These investments, totalling EUR [200 000-400 000], were planned for the 2007 financial year and were to be depreciated over the term of the CDSP. In accordance with Amendment No 2 ([37]), VTAN financed the renewal of the airport's air-conditioning system, which the delegating authority undertook to take over at the end of the delegation, in return for the delegatee being paid the undepreciated value of the asset. Generally speaking, the operator financed the maintenance and renewal of the operating equipment. All other investments were the responsibility of the SMAN and its member authorities.

(74) From 2 July 2011 the area covered by the CDSP included the military area. According to France, the transfer of management of the military area necessitated work and purchases that were vital in order to continue operating the airport, particularly in terms of its certification (i.e. to ensure the transfer of management of the former military area of Nîmes airport and the tasks carried out up to then by the airbase, which had the effect of altering the obligations of VTAN and the terms of its compensation). This work was identified by working groups made up of the Directorate-General for Civil Aviation, the Ministry of Defence, the SMAN and VTAN. As indicated in recital 72, in return for these new obligations, VTAN was to receive an equipment subsidy estimated at EUR [300 000-500 000] for 2011 and EUR [600 000-900 000] for 2012, i.e. a total of EUR [900 000-1 400 000].

(75) According to France, the investments made by VTAN over the entire term of the CDSP amounted to EUR [600 000-900 000].

3.3. *AGREEMENTS SIGNED WITH RYANAIR/AMS*

(76) The history of Ryanair's activity at Nîmes airport is set out in recital 18.

([35]) France's comments on the opening decision, p. 15.
([36]) Article 25 of the CDSP of 12 December 2006.
([37]) Amendment No 2 of 20 July 2010.

3.3.1. AGREEMENTS SIGNED WITH THE CCI-AIRPORT

(77) The French authorities point out that there was a general balance among the activities pursued at the airport, which was based on the coexistence of the army, industrial enterprises in the aviation field (fuel recycling) and passenger transport activity, with over 2 000 jobs being at stake. In this economic context, the CCI, firstly on its own and subsequently with its partner local and regional authorities, sought to maintain the routes operated from Nîmes airport. In particular the CCI strived to overcome the drop in traffic recorded following the announcement of the new TGV line, which finally came into operation in June 2001.

(78) The French authorities have also confirmed that the agreements and amendments signed between Ryanair and the CCI were not the subject of any formal resolutions by the CCI authorising the negotiations. In this respect, France makes clear that the signature of agreements with airlines is an everyday administrative act, for which the approval of the General Meeting is not needed given that the president of the CCI has broad power, including the right to sign agreements on behalf of the CCI ([38]).

3.3.1.1. ***Agreement of 11 April 2000 between the CCI and Ryanair***

(79) An initial agreement, signed on 11 April 2000 between the CCI and Ryanair for a term of 10 years, set the amount of the airport charges applicable to Ryanair. The airline also undertook in that agreement to serve Nîmes airport daily. According to France, an oral commitment to a load factor of 70 % was made, which was seemingly exceeded by 10 percentage points.

(80) Under the agreement of 11 April 2000, Ryanair benefited from discounts on the tariffs applicable at Nîmes airport. In view of the flight schedules and characteristics, parking and lighting charges were not applied to the airline. Ryanair also benefited from […]. The passenger and landing charges applied to the airline were in line with the general rate card. France notes that any airline operating the same volume of flights as Ryanair could have benefited from identical tariffs ([39]).

(81) In return for the discounts granted to Ryanair on the ground handling charge, this agreement provided for a financial penalty payable by Ryanair if the annual passenger target was not met. In this case, Ryanair was to pay a penalty of EUR […] per missing passenger. A lower tariff of EUR […] was granted to Ryanair by VTAN, given the large number of flights operated.

(82) The agreement also provided for part of the proceeds from the landing charge set in the agreement signed with Ryanair to be used to contribute towards the marketing costs. This contribution, which formed part of the proceeds from the landing charge, was calculated as the difference between the amount of the landing charge paid by Ryanair and the sum of EUR […], to which part of the passenger charge, set at EUR […] per Community passenger, was added.

3.3.1.2. ***Amendments to the agreement of 11 April 2000***

(83) The agreement of 11 April 2000 was amended following an exchange of correspondence, firstly at the end of 2001 ([40]) and secondly in March 2004 ([41]). These amendments provided for an increase in the payments made by the CCI to Ryanair with a view to the development of additional routes.

(84) The 2001 amendments provided for an increase in the marketing contribution paid by the CCI to Ryanair, which rose to EUR […] per passenger outbound from Nîmes airport on routes operated to London until 31 October 2002, provided that Ryanair launched the second route to London for the summer service.

([38]) Letter from France of 20 March 2014.
([39]) France's comments on the opening decision, p. 56.
([40]) Letters of 28 November 2001, 11 December and 18 December 2002, 21 and 24 December 2001, 2 and 5 February 2002, and 15 February 2002.
([41]) Letters of 10 March and 16 March 2004.

(85) However, the 2004 amendments provided for an increase in the marketing contribution of EUR […] per passenger, provided that a second route to London was launched during the summer season (from 29 April 2004).

3.3.1.3. ***Agreement of 10 October 2005 between the CCI and Ryanair***

(86) On 10 October 2005 a new agreement was signed between Ryanair and the CCI, for an initial term of five years that was renewable for a further term of five years. With retroactive effect from 1 January 2005, it set the amount of the airport charges payable by Ryanair, which corresponded to the general rate card applied at Nîmes airport, except for the parking, lighting and […] charges, which were waived. In addition, the airline was set traffic targets.

(87) The new agreement also contained an incentive scheme for the development of traffic. This was based on the CCI paying a contribution of EUR […] per passenger outbound from Nîmes airport and EUR […] per landing throughout the term of the agreement. A penalty clause was included in the event that Ryanair failed to meet the traffic targets set in the agreement. Under the terms of this clause, if the volume of passengers carried was between […] and […] % of the target traffic, the amount of the passenger payment would be reduced to EUR […] throughout the year in question and until the traffic target was once again met. If the volume of passengers carried was less than […] % of the target traffic, […].

(88) Under the terms of this agreement, Ryanair undertook to operate:

— a daily service to London Stansted for a volume of 40 000 passengers/year,

— an additional daily service to London Stansted during the summer, for six consecutive months, for an additional volume of 22 000 passengers,

— a service to Liverpool on four days out of seven, for a volume of 22 000 passengers,

— an additional service from April 2006 to a destination to be determined, for a volume of 22 000 passengers.

(89) The agreement also provided for financial penalties in respect of the discounts granted to Ryanair on the ground handling charges and a penalty of EUR […] per passenger if the annual passenger target was not met.

3.3.1.4. ***Agreement of 10 October 2005 between the CCI and AMS***

(90) On 10 October 2005 an agreement was also signed, for a period of five years renewable for the same period, between the CCI and Airport Marketing Services Limited ('AMS'), a wholly owned subsidiary of Ryanair. This agreement also applied retroactively from 1 January 2005. The object of this agreement was the purchase by the CCI of related marketing services, namely:

— five paragraphs of 150 words in the 'Five things to do' section on the Nîmes destination page of Ryanair's website,

— five links to the websites designated by the CCI in the status bar on the Nîmes destination page of Ryanair's website,

— one link to the website designated by the CCI in the 'Five things to do' section on the Nîmes destination page of Ryanair's website,

— for seven days per year, one link to the website designated by the CCI on the homepage of Ryanair's British website, with all the above services, or package No 1, being provided for the sum of EUR […] excluding tax per year,

— from the announcement of new routes from Nîmes airport in 2006, for 26 days per year, one link to the website designated by the CCI on the homepage of Ryanair's British website (package No 2) for the sum of EUR […] per year,

— from the announcement of new routes from Nîmes airport in 2007, for an additional three days per year, one link to the website designated by the CCI on the homepage of the website (package No 3) for the sum of EUR […] per year,

— in 2005: an email offer promoting the destination of Nîmes for the sum of EUR […],

— in 2006: an email offer promoting the destination of Nîmes for the sum of EUR […],

— in 2007: an email offer promoting the destination of Nîmes for the sum of EUR […].

(91) This agreement was amended twice:

1. Amendment of 30 January 2006 (Amendment No 1), which extended the term of the agreement between the CCI and AMS to the end of the CCI's effective operation of the airport, i.e. 31 December 2006, despite the termination of the equipment concession. This amendment introduced a clause requiring the CCI and AMS to make their 'best efforts' to ensure that an equivalent agreement was signed with the future operator. According to the French authorities, this amendment was the logical consequence of the airport's operation by the CCI being temporarily extended beyond the end of the concession agreement ([42]).

2. Amendment of 17 October 2006 (Amendment No 2), which reduced the cost of the marketing services provided to the CCI given that the CCI was allegedly unable to supply the marketing materials requested. The amendment stipulated that the marketing services provided from 2007 would comply with the base agreement. The provision of marketing services was suspended from April and July 2006 to 31 December 2006 due to the CCI being unable to supply the marketing materials to be included on the Ryanair website. In the end, the sums due by the CCI for 2006 were as follows:

— EUR […] instead of EUR […], for package No 1,

— EUR […] instead of EUR […], for package No 2,

— EUR […] instead of EUR […], for package No 3,

— another service costing EUR […] per invoiced file, which was not amended, was included in the amendment.

3.3.2. AGREEMENTS SIGNED WITH VTAN (2007-2011)

(92) France has explained that the decisions to sign the various agreements with Ryanair were made by the sole director of VTAN and its chairperson and were not therefore the subject of resolutions or meetings ([43]).

3.3.2.1. ***Agreement of 2 January 2007 between VTAN and Ryanair***

(93) On 2 January 2007 an airport services agreement was signed between Ryanair and the company VTAN, which set the landing and passenger charges payable by the airline and which granted the airline a contribution per passenger under an incentive scheme for the development of traffic. This agreement applied from 1 January to 31 October 2007.

3.3.2.2. ***Agreement of 2 January 2007 between VTAN and AMS***

(94) On the same day, the company VTAN signed a marketing services agreement with the company AMS for the purchase of marketing services costing EUR […]. As with the previous agreement, this applied from 1 January to 31 October 2007.

([42]) Letter from France of 25 April 2014.
([43]) Ibid.

(95) On 1 August 2007 VTAN and AMS signed an amendment to this agreement in which they agreed on the payment of an additional contribution of EUR […] for the period between 1 September 2007 and 28 February 2008. This amendment was a condition for the Ryanair service to Charleroi to be maintained for the 2007-2008 winter season. France takes the view that this additional contribution was imposed by Ryanair on VTAN, which, given its status as an entrant to the market, was not in a strong position to negotiate this contribution downwards. France has also confirmed that this amendment was not such as to alter the routes and frequencies stipulated in the agreement of 2 January 2007 or the expected traffic ([44]).

3.3.2.3. ***Agreements of 1 November 2007 between VTAN and Ryanair/AMS***

(96) On 7 November 2007 two new agreements were signed, for an initial term of one year that was renewable three times, in order to continue the airport services agreement and marketing services agreement that had expired. Although the provisions were similar, the payments to Ryanair and its subsidiary were increased to EUR […].

3.3.2.4. ***Agreements of 27 August 2008 between VTAN and Ryanair/AMS***

(97) On 27 August 2008 two new agreements, one for airport services and the other for marketing services, replaced the contractual framework described above as from 1 November 2008, for a term of one year renewable twice.

(98) Under the airport services agreement, Ryanair undertook to operate ([45]):

— a daily service during the summer and a service on four days out of seven during the winter to London Luton, for a volume of […] passengers/year,

— a service to Charleroi on four days out of seven, for a volume of […] passengers.

(99) The new agreement also contained an incentive scheme for the development of traffic. This was based on the CCI paying a contribution of EUR […] Likewise, the agreement included a penalty to be paid by Ryanair of EUR […] per passenger if the traffic target was less than […] passengers.

3.3.2.5. ***Amendments to the agreements of 27 August 2008***

(100) Two 'amendments' of 25 August 2009 respectively extended the marketing services agreement and the airport services agreement to 31 December 2011.

(101) Amendment No 1 to the marketing services agreement of 18 August 2010 exceptionally increased VTAN's contribution by EUR [20 000-50 000] in order to target new tourists, according to the contracting parties. France takes the view that this amendment was agreed in order to maintain good commercial relations between the airport operator and Ryanair ([46]).

(102) Amendment No 2 to the marketing services agreement of 30 November 2010, which was connected with Ryanair maintaining the route to Liverpool, exceptionally increased VTAN's contribution by EUR [35 000-65 000]. France has indicated that this amendment was agreed due to pressure being exerted by Ryanair on VTAN with regard to the Liverpool route. Traffic on the route had fallen considerably and Ryanair had threatened to withdraw […] flights from this route. It made the continuation of these flights for […] conditional upon the purchase of additional marketing services to contribute to the promotion of this route ([47]).

([44]) Ibid.

([45]) The Liverpool route was also being operated at this time. France has explained that this service did not stop between 2005 and 2012, but was always a seasonal service. France underlines that this service was not included in the marketing agreement of 27 August 2008 because its status was in doubt (its suspension was envisaged at that time), although it continued operating between 2008 and 2011 at a reduced frequency. As a result, the 2008 marketing agreement did not provide for any services on the Ryanair website to be purchased for this route. This route was operated between 2008 and 2010 without any marketing counterpart.

([46]) See footnote 42.

([47]) Letter from France of 26 May 2014.

4. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

(103) The Commission considered it necessary to initiate the formal investigation procedure in order to examine all the financial contributions made by the various public authorities and bodies to the airport operators between 2000 and the date of the opening decision, including the financial contributions described in Section 3.2, and to assess the possible aid to Ryanair provided for in all the agreements between the airport operators and the airline and/or its subsidiaries between 2000 and the date of the opening decision (25 April 2012).

(104) Firstly, in its assessment of the financial contributions made to the airport operators, the Commission expressed its doubts about the existence of an economic advantage under Article 107(1) TFEU.

(105) The airport operators and France asserted that the overall management of Nîmes airport constituted a service of general economic interest. The Commission therefore assessed the financial support measures in favour of the airport operators in the light of the *Altmark* judgment. The Commission separately assessed the CCI-Airport operating period (2000 to 1 February 2006), the period covered by the delegation agreement between the CCI and the SMAN (1 February 2006 to 31 December 2006) and the VTAN period (2007 to 2012). With regard to the CCI operating period, it considered that the first *Altmark* criterion was not met during the 2000-2006 period and therefore that the measures granted to the CCI and the CCI-Airport could not be regarded as compensation for a service of general economic interest during the 2000-2006 period.

(106) As regards the VTAN operating period, the Commission considered that the French authorities had not proven that Nîmes airport was an exceptional case allowing the overall management of the airport to be defined as a service of general economic interest. In addition, the Commission expressed doubts that the clauses of the CDSP met the requirements associated with the second, third and fourth *Altmark* criteria.

(107) With regard to the compatibility of the financial contributions with the market economy operator principle, the Commission could not rule out that the contributions in question had given the successive operators of Nîmes airport a selective advantage over the entire period covered by the decision. It could not therefore rule out that these financial contributions constituted State aid.

(108) In addition, the Commission also assessed the compatibility with the internal market of the measures in favour of the airport operators in the light of the 2005 Guidelines ([48]) and its decision-making practice. As regards the investment aid, the Commission concluded that it did not have clear information on the investments financed by the public authorities for the benefit of the successive airport operators. As regards the compatibility of the operating aid with the internal market, the Commission considered that these measures constituted operating aid for which the French authorities had not provided any justification as regards their possible compatibility with the internal market.

(109) Secondly, as regards the assessment of possible aid granted to Ryanair, the Commission considered that the airport services agreements and marketing services agreements signed at the same time had to be assessed together, as Ryanair and AMS formed a single beneficiary of the measures concerned. The Commission considered that, in order to determine whether these various agreements constituted State aid, this principle needed to be taken into account and the private investor in a market economy test needed to be applied on the various dates when the agreements were signed, namely:

— on the date of signature of the airport services agreement with Ryanair, i.e. 11 April 2000,

— on the dates of the letters from November 2001 to February 2002 and from March 2004, which amended the airport services agreement signed on 11 April 2000 with Ryanair,

— on the date of signature of the new contractual framework consisting of the airport services agreement with Ryanair and the marketing services agreement with AMS, i.e. 10 October 2005,

([48]) Community guidelines on financing of airports and start-up aid to airlines departing from regional airports (OJ C 312, 9.12.2005, p. 1).

— on the dates of the two amendments to the marketing services agreement signed with AMS on 10 October 2005, namely Amendment No 1 of 30 January 2006 and Amendment No 2 of 17 October 2006,

— on the date of signature of the airport services agreement with Ryanair and the marketing services agreement with AMS, i.e. 2 January 2007,

— on the date of signature of the airport services agreement with Ryanair and the marketing services agreement with AMS, i.e. 1 November 2007,

— on the date of signature of the airport services agreement with Ryanair and the marketing services agreement with AMS, i.e. 1 November 2007,

— on the date of signature of the amendments of 25 August 2009, which extended the agreements of 27 August 2008 to 31 December 2011,

— on the dates of 1 August 2007, 18 August 2010 and 30 November 2010, which were the dates of the amendments making substantial changes to the marketing service agreements signed with AMS.

(110) In this context, first of all the Commission particularly considered that, based on the information at its disposal, it could not rule out that Ryanair/AMS had benefited from State aid under the contractual and commercial framework with the successive airport operators. The Commission considered that the measure in question was likely to constitute State aid, paid to AMS by the operators, which was prohibited in principle under Article 107(1) TFEU. This view was based on an analysis of the information submitted by France and the circumstances under which this agreement was signed.

(111) In addition, the Commission expressed doubts as to whether the airport operators, by signing the airport services agreements and marketing services agreements, had behaved as prudent market economy operators pursuing a global or sectoral structural policy, guided by prospects of profitability in the more or less long term. The Commission observed that there were no market studies and/or business plans for the various agreements signed with Ryanair/AMS that economically supported the airport's decision to make such undertakings to Ryanair/AMS.

(112) In order to carry out this analysis, the Commission proposed to apply the single till principle to the airport's operation, by taking into account both the aeronautical revenue (airport and ground handling charges) and the revenue from the airport's non-aeronautical activity (shops, car parks, etc.).

(113) With regard to the CCI operating period, the Commission observed that it was difficult to establish how the discounts and rebates granted on the airport charges and the waiver of the ground handling charges had been determined in relation to the operating costs of the airport infrastructures, and therefore the costs of providing the airport services. In this context, the Commission expressed doubts as to whether the CCI-Airport had acted as a prudent market economy investor in its relations with Ryanair.

(114) As regards the VTAN operating period, the Commission noted that the implementation of the new contractual framework defined from 2007 seemed to substantially degrade the operator's financial situation, as a result of which the Commission could not rule out that Ryanair/AMS had benefited from State aid due to the contractual and commercial framework in question.

(115) Lastly, the Commission expressed doubts about the compatibility of these measures with the internal market under the 2005 Guidelines.

5. COMMENTS MADE BY INTERESTED PARTIES

(116) The Commission received comments from the following interested third parties: the CCI, VTAN, the SMAN, Ryanair, AMS and Transport & Environment.

5.1. *COMMENTS SUBMITTED BY INTERESTED THIRD PARTIES FOLLOWING THE OPENING OF THE FORMAL INVESTIGATION PROCEDURE*

5.1.1. JOINT COMMENTS OF THE CCI, VTAN AND THE SMAN

(117) The two airport operators during the period covered by the opening decision, namely the CCI and VTAN, submitted their comments jointly with the SMAN. The CCI, VTAN and the SMAN will hereinafter be referred to as 'the Operators'.

(118) The Operators stress that Veolia Transport and VTAN are two separate entities. The first is the company selected to operate Nîmes airport, whilst VTAN replaced Veolia Transport in the performance of the public service delegation agreement.

5.1.1.1. ***Reminder of the public service mission of operating Nîmes-Alès-Camargue-Cévennes airport***

(119) The Operators note that the SMAN is a legal person governed by public law. The SMAN was assigned public service missions by the French state under the transfer of powers to the local and regional authorities. The Operators assert that, in accordance with the case-law of the French Council of State ([49]), when a *syndicat mixte* or joint association operates an aerodrome, there is a public service inherent in the nature of its activity. The SMAN subsequently decided to delegate the airport's operation to the CCI and then to VTAN in accordance with French law and subject to monitoring of its legality by the Prefect of the Gard Department, without the latter identifying any illegality.

5.1.1.2. ***Measure 1: Assessment of the financial contributions made to the airport Operators***

5.1.1.2.1. **Existence of aid**

5.1.1.2.1.1. *Tasks falling within the powers of a public authority and infrastructure used to perform those tasks*

(120) The Operators take the view that aircraft firefighting and wildlife hazard prevention services are not security services, but sovereign tasks associated with safety that are covered by the airport tax, such that these are non-economic activities falling outside the scope of the European rules on State aid.

5.1.1.2.1.2. *Financing of the operation*

(121) The Operators stress that, during the CCI operating period, neither the repayable advances paid by the CCI's general arm for the benefit of the airport's accounts nor the rebilling system for joint costs can be regarded as acts that may be assessed under the State aid rules. Accordingly, in their view, in the first case the CCI acted as a private investor ensuring that its business had the necessary resources and, in the case of the rebilling system for joint costs, these costs were decided based on objective criteria associated with the volume of services provided to each recipient.

5.1.1.2.1.3. *Compatibility of the flat-rate contribution with the Altmark case-law*

(122) Clearly defined public service obligations. The Operators refute the Commission's view that developing the airport, particularly for commercial flights, cannot be defined as a service of general interest. In fact, they consider that (i) the Member States enjoy broad discretion in defining what they regard as a service of general economic interest (SGEI); and that (ii) the 'development of air traffic' has a wider objective, namely regional development, which is an objective that, according to the Operators, has already been recognised by the Commission as being a general interest objective.

(123) In addition, the Operators have submitted a study proving that the airport's impact on the local economy is clearly greater than the flat-rate contribution, due to the airport's importance as a focus of activity.

(124) The Operators also refer to the contents of the CDSP to prove that (i) the CDSP contains numerous obligations associated with the maintenance and accessibility of the airport; and that (ii) VTAN was required to ensure the continuity of the public service under threat of penalties, by assuming obligations that a private investor, based on its own commercial interest, would not have assumed or would not have assumed to the same extent or under the same conditions.

([49]) Council of State, 21 February 2011, *Société Ophrys* v *CA Clermont Communauté*, Application No 337349.

(125) The Operators assert that the Commission has misinterpreted the meaning of the expression 'development of air traffic'. Unlike the Commission, which has taken the view that this task involves developing the airport, the Operators have indicated that, in its broader sense, this task corresponds to regional development, which they claim to be a clearly defined general interest objective. In addition, in their view, this task also includes development of the industrial hub.

(126) The Operators also stress that, contrary to the Commission's opinion, the compensation granted to VTAN did not depend on how the aviation activity developed. In fact, the flat-rate contribution took the form of compensation fixed at EUR [1 200 000–1 500 000] per year in the reference scenario, which could only go down subject to certain conditions defined in the CDSP.

(127) Lastly, the Operators consider that the overall management of Nîmes airport, given its size and local role, should be regarded as an SGEI, given that the Commission has not proven that a private market economy operator would have been prepared to assume such obligations in the absence of public service compensation.

(128) Parameters established in advance for determining the amount of compensation. The Operators maintain that the flat-rate contribution paid by the delegator to the delegatee was fixed, and was only indexed each year according to a clearly defined formula. Furthermore, they clarify that the exceptional increases stipulated in the amendments were agreed as a result of the occurrence of events that were unforeseeable at the time when VTAN drew up its tender.

(129) Fair compensation for costs arising from public service obligations. The Operators rely on a quantitative analysis to prove that the airport operator was not overcompensated. As a result, given the size of Nîmes airport, all the operator's economic costs (excluding sovereign tasks) must be taken into account to determine the existence of overcompensation. In this context, over the 2007-2011 period, there was allegedly a loss of nearly EUR [1-3] million. Only if the entire flat-rate contribution were allocated solely to the public service costs in the strict sense would the operator make a profit of EUR [2-4] million. Lastly, the Operators stress that, if the AMS expenditure is included in the public service missions, the compensation covers only […] % of the AMS expenditure of EUR [5-7] million over the 2007-2011 period, less the public service costs in the strict sense, which does not show any overcompensation.

(130) Selection of the service provider. The Operators rely on an independent economic study to prove that the negotiated procedure allowed the most efficient operator to be selected (i) by improving the efficiency of the agreement; and (ii) by allowing the Operators to submit more aggressive tenders. The procedure followed with Veolia met the final *Altmark* criterion, given that the predicted costs used to calculate the financial contribution reflected the costs of a well-run airport of the same size as Nîmes.

5.1.1.2.1.4. *Clarifications on the AMS expenditure*

(131) VTAN stresses that Ryanair and AMS are two separate entities and that their contractual relations must therefore be treated separately. In addition, the Operators maintain that all the services contracted to AMS fell within the public service missions assigned to VTAN. As a reminder, the main objective of these public service missions was the economic and tourism development of the Nîmes region.

5.1.1.2.1.5. *Financing of the infrastructure*

(132) The Operators confirm that the only work directly carried out by the CCI during its operation of Nîmes airport involved the expansion and adaptation of the passenger terminal, with this work being financed from the CCI's own resources or through loans taken out in its name. Given that the vast majority of this work took place during the 1990s, the applicable legislation is the 1994 Aviation Guidelines, meaning that the financing of this work escapes the monitoring of State aid carried out by the Commission.

(133) The Operators also note that, except for the passenger terminal, the investments were made in the airbase, as the commercial activity was secondary.

(134) During the VTAN operating period, the main investments, which were mainly military in nature, involved bringing the runway into compliance. These investments were made to meet the basic needs of the airbase. In addition, other investments were made between 2010 and 2011 to bring the terminal into compliance following an unfavourable opinion from the Safety Commission, which could not have been anticipated when the delegation was granted.

(135) As regards the financing of certain investments by the SMAN, the Operators assert that this was the only possible solution given the short term of the CDSP, which was much shorter than the 'investment depreciation period'. In addition, they assert that, if these investments had been taken into account at the time of the invitation to tender, the interested parties would have requested higher compensation. To conclude, they assert that the infrastructure being placed at the operator's disposal without charge did not confer any advantage on VTAN because, in the absence of the SMAN's support for certain investments, the associated costs would have been directly included in the amount of the flat-rate contribution.

(136) As regards the equipment subsidy granted to VTAN following closure of the airbase, the Operators maintain that the investments in the aircraft rescue and firefighting service (*service de sauvetage et de lutte contre l'incendie des aéronefs sur les aérodromes* — 'SSLIA') and in the creation of an automatic parameter transmission system (*système de transmission automatique des paramètres* — 'STAP') cannot be regarded as falling within the airport's commercial activity rather than its sovereign activities.

5.1.1.2.1.6. *Effect on intra-EU trade and competition*

(137) The Operators maintain that a regional airport's catchment area is limited to those airports that can be reached by car within a maximum of 60 minutes. They also note that customers of low-cost airlines are much more sensitive to the costs of transport to the airport.

(138) With regard to Montpellier airport, the Operators take the view that its potential passengers would not be interested in travelling to Nîmes, given the additional journey time and the additional cost incurred. Furthermore, Montpellier airport serves a tourist demand that is situated more to the west of the airport, whereas Nîmes airport covers a different catchment area. Lastly, the existence of identical destinations served by the two airports (London and Brussels) and the study of their traffic show that there is no competition between Montpellier airport and Nîmes airport.

(139) Likewise, with regard to Avignon airport, the Operators take the view that its potential passengers would not be interested in travelling to Nîmes, given the additional journey time and the additional cost incurred. Furthermore, the destinations served by the two airports are different (except for London, although the arrival airport is different and the Avignon service is targeted at a different type of passenger, mainly business passengers). In addition, a 2011 passenger survey highlighted the low ranking of Avignon airport among the other airports situated in the region.

(140) With regard to Marseille airport, the Operators stress that, in accordance with the Commission's decision-making practice, the activities of a Category D airport such as Nîmes cannot really hinder those of an airport such as Marseille, which sees annual traffic of over 7 million passengers, given that the two airports are not substitutes as far as users are concerned. In addition, an independent economic study shows that the drop in passenger numbers at Nîmes following the opening of the low-cost terminal at Marseille in 2007 was less than the losses recorded during the period prior to that opening.

(141) As regards the financing granted to the CCI and VTAN, the Operators consider that this could not have affected the airport operating market given that the overlap between the catchment areas of Montpellier, Avignon and Marseille airports is very limited.

5.1.1.2.1.7. *Compatibility of the measures with the internal market*

(142) The Operators consider that all the measures examined are compatible with the internal market. Given that their aim is the performance of general economic interest tasks, these measures *de facto* meet the SGEI criteria and are therefore compatible with the 2005 Guidelines.

5.1.1.2.1.8. *Compatibility of the operating aid with the SGEI Decision* ([50])

(143) CCI operating period to February 2006. The aid is compatible with the internal market given that (i) there was an act entrusting the public service missions (in particular the 1986 AOT); (ii) the compensation was limited to the costs necessary to perform the public service (there were legal mechanisms, such as Circular No 111 of 30 March 1993, to ensure fair compensation); and (iii) there were regular checks to ensure the absence of overcompensation (monthly reports verifying that the voted budget was being properly implemented).

(144) CCI operating period from 1 February 2006 to 31 December 2006. In this case, the SGEI criteria were also met given that (i) the delegation agreement of 1 February 2006 imposed clearly defined public service obligations; (ii) the agreement also stipulated that the compensation must be limited to the costs necessary to perform the public service; and (iii) regular checks were also carried out.

(145) VTAN operating period. The CDSP also met the criteria, in particular (i) the existence of an act entrusting the public service missions; (ii) the limitation of the compensation to the necessary costs; and (iii) the absence of overcompensation given that there was an annual report to the delegating authority that set out the economic and financial results for the year.

5.1.1.2.1.9. *Compatibility of the infrastructure aid with the 2005 Guidelines*

(146) Clearly defined objective of general interest. The investment measures met a clearly defined objective of general interest, namely the economic and tourism development of the Gard department because, according to the Operators, the specific net impact of Nîmes airport on the local economy was approximately EUR 71 million, based on both the jobs created by the airport and net tourism flows.

(147) Necessity and proportionality of the investments. The majority of the investments were made in the 1990s. The investments made during the CCI operating period that are covered by the opening decision were minor and intended to bring the airport into compliance with the applicable safety standards. In addition, the investments made during the VTAN operating period involved renovating the runway in 2007 and bringing the terminal into compliance between 2010 and 2011.

(148) Satisfactory medium-term prospects for use. The Operators maintain that there were satisfactory prospects during both operating periods. Accordingly, the CCI underlines that, during its operating period, the prospects were positive given that traffic had increased by 3,5 times over the 20 years prior to the airport's resizing. Likewise, VTAN asserts that, when the CDSP was signed, there were satisfactory medium-term prospects.

(149) Equal and non-discriminatory access to the infrastructure. The general rate card determined the charges to be paid by any airline operating from Nîmes airport.

(150) Absence of effect on the development of trade to an extent contrary to the Community interest. Given that the aid granted was unlikely to affect the airports situated within the catchment area of Nîmes airport.

(151) Proportionality and necessity of the aid — incentive effect. In the absence of these measures, the airport would have been closed. In addition, the fact that an invitation to tender covering the operation of the airport was launched in 2007 shows that no economic operator would have agreed to assume these investments.

([50]) Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ L 7, 11.1.2012, p. 3).

5.1.1.3. ***Measure 2: assessment of the aid potentially granted to Ryanair and AMS***

5.1.1.3.1. **State resources and imputability to the state of the payments made by VTAN to Ryanair and AMS**

(152) CCI operating period. The Operators maintain that the aid does not meet the *Stardust* ([51]) criteria with regard to imputability to state resources. The Operators claim that the only argument put forward by the Commission to establish imputability is the supervision exercised over the CCI in accordance with the French Commercial Code. In their opinion, the region's supervision is limited to certain categories of financial commitments, which do not in any way include services and marketing agreements signed with airlines. As a result, this criterion is insufficient to establish the imputability of state resources. As regards the other criteria in the aforementioned case-law, the Operators take the view that (i) there are no links with a public body; (ii) the decisions under analysis were made by the CCI in the context of activities carried out in competition with private operators; and (iii) the state's involvement in the decisions under analysis has not been proven.

(153) VTAN operating period. The Operators point out that there was no automatic link between the amount of the public contribution granted to VTAN and the agreements negotiated by VTAN with Ryanair and AMS. With regard to the imputability of the measures to the state, the measure was adopted by a private undertaking such that the criteria set out in the *Stardust* case-law are not met.

5.1.1.3.1.1. *Selective advantage*

5.1.1.3.1.1.1. Joint analysis of the airport services agreements and marketing services agreements

(154) The Operators do not agree with the joint analysis of the agreements, as announced by the Commission, because, in their opinion, the two types of agreement have different conditions and objects.

5.1.1.3.1.1.2. Analysis of the marketing services agreements signed with AMS

(155) CCI operating period. The Operators consider that advertising on specialist websites is an essential service for the development of any regional airport. They believe that this activity is in line with Commission practice and Court of Justice case-law, given that this is a service paid for at market price.

(156) VTAN operating period. The Operators point out that all the payments made to Ryanair were made in the context of the public service mission delegated to VTAN, in particular to promote the region and its economic and tourism development.

5.1.1.3.1.1.3. Analysis of the airport services agreements signed with Ryanair

(157) The Operators consider that the Commission cannot expect a small airport such as Nîmes to pass on all its costs to the airlines. As a result, they suggest that, in order to measure the profitability of the commercial relationship, only the variable costs exclusively attributable to the airline should be taken into account, with the fixed costs that would have to be borne in any event being excluded.

(158) During the CCI operating period. The Operators stress that the conditions granted to Ryanair could have been offered transparently and non-discriminatorily to any airline making a commitment in an identical manner to Ryanair.

([51]) Judgment in *France* v *Commission*, C-482/99, EU:C:2002:294.

(159) During the VTAN operating period. The Operators consider that the Commission cannot include 100 % of the AMS expenditure in the costs chargeable to the commercial operation of the airport in so far as this expenditure was fully or partly made in the context of VTAN's public service mission of promoting the region. In addition, the Operators point out that Nîmes airport was the first airport operated by VTAN and, as a result, it was vital for VTAN to ensure Ryanair's presence, if necessary through an initial loss, in order to allow the group to acquire the experience needed to develop its airport operation activity. Lastly, the Operators stress that, in this context, the public authorities (and particularly the SMAN) did not play any role in the commercial relationship established between Ryanair and VTAN.

5.1.2. RYANAIR

5.1.2.1. ***Ryanair's comments on the opening decision***

(160) Ryanair has submitted a report prepared by Oxera, an independent economic consultancy firm, in order to prove that Ryanair's agreements with Nîmes airport comply with the market economy operator principle. This report concludes that the average charges paid by Ryanair at Nîmes airport are higher than the average charges applied at comparable airports acting as market economy investors (Oxera examined […], […], […], […] and […] airports).

5.1.2.1.1. **No aid from 'state resources', no imputability to the state**

5.1.2.1.1.1. *Agreements with the CCI (before 1 January 2007)*

(161) The Commission claims that Ryanair and AMS were paid amounts owed under their respective agreements not by the CCI but by state entities such as the Languedoc-Roussillon Region.

(162) Ryanair takes the view that the Commission cannot credibly support its claims regarding imputation to the state and use of state resources through its arguments regarding the CCI. Ryanair asserts that, under both European Union case-law ([52]) and French law ([53]), the French state does not enjoy any influence in the decision-making processes of the chambers of commerce, with its role being limited to supervising certain decisions and its approval not being required for the signature of agreements such as the 'airport services agreement' and the 'marketing services agreement'.

(163) Ryanair indicates that not all the resources of the CCIs come from taxes, given that they have their own resources generated, for example, by their commercial activities. In the specific case of airports, the CCIs must finance their airport operations independently, under the French Civil Aviation Code.

5.1.2.1.1.2. *Agreements with VTAN (after 1 January 2007)*

(164) Ryanair asserts that the fact that flat-rate contributions were involved clearly shows that these contributions did not correlate to specific payments by VTAN to Ryanair. It also maintains that the imputation of the measures to the state has not been established by the Commission and that the analysis therefore fails to meet the criteria required for the imputation of a measure to the state.

(165) In addition, Ryanair concludes that the change of contractual partners (from the CCI to VTAN) entailed a change in the negotiating conditions, which allegedly proves that VTAN was not simply a front for the French state.

([52]) Judgment in *France* v *Commission*, C-482/99, EU:C:2002:294, paragraphs 52 and 58.
([53]) Council of State, Opinion No 351.654 of 16 June 1992.

5.1.2.1.2. **The Commission's incorrect application of the market economy operator principle**

(166) Ryanair takes the view that the Commission has failed to compare the Ryanair agreements with other agreements signed with comparable private and public-private airports and indicates that, according to the *Chronopost* ([54]) case-law, it is only in the absence of a reference private investor that a market-based analysis can be replaced by a cost-based analysis. According to Ryanair, there are a number of airports that have similar characteristics to those of Nîmes airport, which are encouraged to operate as market economy investors ([55]) and which the Commission could have used as benchmarks in its analysis. In addition, Ryanair takes the view that the Commission's cost-based analysis is limited to a simple mention of these costs.

(167) Moreover, Ryanair explains that, in the present aviation context, certain factors can support the commercial logic of pricing at incremental (or even lower) cost. In particular it mentions the following factors: (i) degree of competition on the market concerned; (ii) interest in attracting airlines to a regional airport that has limited market power; (iii) existence of network externalities at airports; (iv) economic advantage resulting from commitments by airlines to guaranteed passenger numbers; (v) correct definition of incremental revenues; (vi) history and typical profile of European regional airports; and (vii) correct definition of incremental costs.

(168) As regards the presence of network externalities at airports, Ryanair maintains that these are both one-sided (as the number of established routes from a given airport increases, this airport is likely to become more attractive) and two-sided (airlines will be more willing to commence operations at airports with good surface access facilities and a minimum of shopping facilities since they will attract more passengers).

(169) With regard to the economic advantage resulting from commitments by airlines to guaranteed passenger numbers, Ryanair asserts that these guaranteed passenger numbers and the existence of penalties if targets are missed — as stipulated in the airport services agreements signed with Ryanair — enable the airport not only to better plan its activities and adopt policies that minimise costs to a greater extent than if no commitments existed, but also to attract commercial operators ([56]).

(170) As regards the need to adopt a consistent approach to the definition of incremental revenues in relation to the definition of incremental costs, Ryanair proposes a single-till approach, which involves taking account of revenues generated from both aeronautical and non-aeronautical activities, and welcomes the approach adopted by the Commission in this respect. In this context, Ryanair has submitted some financial data for a number of small and medium-sized regional airports in the United Kingdom, which show that there is a clear correlation between growth in passenger numbers and growth in non-aeronautical revenues. That being so, Ryanair takes the view that it makes sound business sense to lower the airport charges for airlines that generate non-aeronautical revenues in order to maximise such revenues (the single-till approach therefore justifies lower airport charges).

(171) As regards the profile of European regional airports, Ryanair notes that none of them was originally conceived as a commercial 'market economy investor'-type venture (most of them were created several decades ago as public infrastructure serving a variety of purposes, such as military uses, civil or leisure aviation, etc.). Ryanair is therefore convinced that a market economy investor would have to consider both the airport infrastructure and the fixed operating costs, and that the decision as to whether or not an airline could operate at the airport would not in any way change the existence or amount of the initial sunk costs, which must therefore be ignored in the analysis of the decision. Ryanair takes the view that the costs of closing the airport could be significant, given the need to compensate for breaching long-term commercial agreements with third parties and the existence of other costs such as redundancy costs, environmental costs associated with decontaminating the airport site, etc.

([54]) Judgment in *Chronopost* v *Ufex*, C-83/01 P and C-93/01 P, EU:C:2003:388, paragraphs 38 and 40.
([55]) Ryanair indicates that Nîmes airport can be validly compared to […], […], […], […] and […] airports.
([56]) This would mean that a given airport could lower the business cycle risk that it faces and improve cash flow and so reduce the rate of return required by a normal private investor.

(172) Finally, Ryanair stresses that it operates a different business model from most other airlines. As a result, the cost to an airport of serving Ryanair is likely to be lower than the cost to an airport of serving other carriers that use a wider range of airport facilities. Therefore, from the viewpoint of a market economy investor, any commercial offer will normally be an improvement on the existing situation, as long as the airport's expected incremental revenues exceed its incremental costs. In addition, as already stated, Ryanair considers that airport infrastructure already constructed is a sunk cost that should not affect the incremental choices made by the airport. Moreover, fixed operating costs (such as the costs of maintaining terminal buildings) also should not be included in the assessment of compliance with the market economy operator principle, since this principle is not supposed to be based on an exceptionally successful investment result, but rather on the minimum investment standard sufficient to satisfy a private investor. Ryanair highlights the need to charge investment costs appropriately so that they reflect the airline's use of the facilities offered by the airport. Ryanair also indicates that, for the purposes of applying the market economy investor test, the net present value of the investment over the long term should be compared. Ryanair has submitted an analysis produced by Oxera that confirms that Nîmes airport has acted as a market economy investor under the conditions set out above.

(173) Furthermore, Ryanair asserts that business plans are not systematically used by private investors, and that it itself does not use them. The Commission is therefore seemingly wrong in suggesting that the lack of a business plan prevents a public body from acting as a private investor.

(174) Ryanair strongly objects to the opening decision's use of 'Ryanair/AMS' to designate the single presumed beneficiary of the measures in question, and the conclusion that the marketing services agreements with AMS and the airport services agreements with Ryanair should be assessed together. Ryanair stresses that, generally speaking, its operation of routes is not dependent on the conclusion of a marketing agreement with AMS and that, based on their own perception of their marketing needs, many airports served by Ryanair do not conclude agreements with AMS.

(175) Ryanair refers to the agreements signed with the airport ([57]) to prove that these were not agreed on a non-exclusive basis and that the measures concerning Ryanair were not therefore selective. In addition, Ryanair points out that, since the market economy investor test is met, then any aid, if proven, must have been distributed in some other way (or retained by the airport), either to other users of the airport or to unproductive projects ([58]).

(176) To conclude, Ryanair makes a few general comments, namely (i) it takes the view that the safety and firefighting services are non-economic activities and should not therefore be included in any State aid assessment; (ii) Ryanair did not request any investment in runway infrastructure or other equipment, meaning the investment costs are not chargeable to the agreements with Ryanair; and (iii) none of the measures benefiting VTAN, as described in Section 3.1 of this Decision, can be attributed to Ryanair since it never requested any of the investment projects in question.

5.1.2.2. ***Ryanair's comments of 10 April 2013***

(177) Ryanair submitted two notes prepared by Oxera and an analysis prepared by Professor Damien P. McLoughlin.

5.1.2.2.1. **First Oxera note — Identifying the market benchmark in comparator analysis for MEIP tests. Ryanair State aid cases, note prepared for Ryanair by Oxera, 9 April 2013**

(178) Oxera takes the view that the Commission's approach of accepting only comparator airports in the same catchment area as the airport under investigation is flawed.

([57]) Article 3 of the agreements of 10 October 2005, 1 November 2007 and 27 August 2008.
([58]) Ryanair points out the possibility that the aid was used to cover losses arising from past dealings with Air Liberté and Air Littoral, which became insolvent while owing substantial amounts to the airport, or that it benefited the former manager of the airport's car parks.

(179) Oxera argues that market benchmark prices obtained from comparator airports are not polluted by State aid given to surrounding airports. It is therefore possible to robustly estimate a market benchmark for the MEIP (market economy investor principle) tests.

(180) In fact:

— comparator analyses are widely used for MEIP tests outside the field of State aid,

— companies influence each other's decisions only to the extent that their products are substitutable or complementary,

— airports in the same catchment area do not necessarily compete with each other, and the comparator airports used in the reports submitted face limited competition from public airports in their catchment area (less than one-third of the commercial airports in the catchment area of the comparator airports are fully state-owned, and none of the airports in the same catchment area as the comparator airports was the subject of a State aid procedure (in April 2013)),

— even where the comparator airports face competition from public airports in the same catchment area, there are reasons to believe that their behaviour is in line with the MEIP (for example, where the private sector holds a large stake or where the airport is privately operated),

— airports that respect the MEIP will not set prices below incremental cost.

5.1.2.2.2. **Second Oxera Note — Principles underlying profitability analysis for MEIP tests. Ryanair State aid cases, note prepared for Ryanair by Oxera, 9 April 2013**

(181) Oxera argues that the profitability analysis undertaken by Oxera in its reports submitted to the Commission follows the principles that would be adopted by a rational private sector investor and reflects the approach apparent from Commission precedents.

(182) The principles underlying the profitability analysis are as follows:

— The assessment is undertaken on an incremental basis.

— An *ex ante* business plan is not necessarily required.

— In the case of an uncongested airport, the single-till approach is the appropriate pricing methodology.

— Only those revenues associated with the economic activity of the operating airport should be considered ('Charleroi' decision) ([59]).

— The entire term of the agreement, including any extensions, should be taken into account.

— Future financial flows should be discounted in order to assess the profitability of the agreements.

(183) The incremental profitability resulting from Ryanair agreements with airports should be assessed on the basis of internal rate of return estimates or net present value measures.

5.1.2.2.3. **Analysis by Professor Damien P. McLoughlin — Brand building: why and how small brands should invest in marketing, note prepared for Ryanair, 10 April 2013**

(184) This document aims to set out the commercial logic underlying regional airports' decisions to purchase advertising space on the Ryanair website from Airport Marketing Services (AMS).

([59]) Commission Decision 2004/393/EC of 12 February 2004 concerning advantages granted by the Walloon Region and Brussels South Charleroi Airport to the airline Ryanair in connection with its establishment at Charleroi (OJ L 137, 30.4.2004, p. 1).

(185) There is a large number of very robust, well-known and regularly used airports. Weaker competitors have to overcome the static purchasing behaviour of consumers to grow their business. Smaller regional airports need to find a way to continuously communicate their brand message to as wide an audience as possible. Traditional forms of marketing communication require expenditure beyond their means.

(186) Advertising via AMS:

— offers an opportunity to reach a significant number of people already considering a travel purchase,

— entails relatively low costs (prices in line with commercial rates for online communication),

— allows communication at the point of purchase,

— offers the possibility of creative advertising.

5.1.2.3. ***Ryanair's comments of 20 December 2013***

(187) Ryanair submitted comments on the payments made to AMS. Ryanair disagrees with the Commission's preliminary assessment that the payments made to AMS constitute costs for the airport, as this approach disregards the value of AMS's services to the airport. Ryanair further believes that, for the purposes of the market economy operator analysis, the purchase of valuable marketing services at market rates should be considered separately from a related airport-airline agreement.

(188) In support of its arguments, Ryanair submits an analysis comparing the prices charged by AMS with prices for comparable services offered by other travel websites ([60]). The analysis concludes that the prices charged by AMS were either lower than the average or within the mid-range of the prices charged by comparator websites.

(189) According to Ryanair, this shows that AMS's prices are in line with market prices and that the decision by a public airport to purchase AMS's services satisfies the market economy operator test. Ryanair also produces evidence of the services provided to airports under the AMS agreements in order to prove the value of these services to the airports.

(190) According to Ryanair, if the Commission insists on subjecting the AMS agreements and the Ryanair airport services agreements to one and the same market economy operator test (an approach with which Ryanair disagrees), the value of AMS's services to the airports should not be underestimated.

(191) In addition, Ryanair refers to the conclusions of various reports confirming that Ryanair has a strong pan-European brand capable of attracting a premium for its advertising services.

5.1.2.4. ***Ryanair's comments of 17 January 2014***

(192) Ryanair submitted a report prepared by its economic adviser concerning the principles that it believes should apply to a market economy operator profitability test encompassing both the airport services agreements signed between Ryanair and airports and the marketing agreements signed between AMS and the same airports ([61]). Ryanair emphasises that this does not in any way prejudice its position that AMS agreements and airport services agreements should be subject to separate market economy operator tests.

(193) The report states that AMS-associated income should be included on the revenue side in a joint profitability analysis where AMS expenditure is included on the cost side. In order to do this, the report proposes a cash-flow-based method in which AMS expenditure is treated as additional operating expenditure.

([60]) Oxera, '*Are prices set by AMS in line with the market rate?*', prepared for Ryanair, 20 December 2013.
([61]) Oxera, '*How should AMS agreements be treated within the profitability analysis as part of the market economy operator test?*', prepared for Ryanair, 17 January 2014.

(194) The report argues that marketing activities contribute to creating and enhancing brand value, which is likely to generate business and profits not only during the term of the marketing agreement, but also after its expiry. This is particularly the case when, due to an agreement with Ryanair, other airlines are attracted to the airport, in turn attracting commercial operators and thus increasing the airport's non-aeronautical revenue. According to Ryanair, were the Commission to undertake a joint profitability analysis, these benefits should be taken into account by treating AMS expenditure as additional operating expenditure, with the additional profits being calculated net of the AMS payments.

(195) Ryanair also considers that a terminal value could be included in the projected additional profits at the end of the term of the airport services agreement in order to take account of the value accruing after the expiry of the agreement. The terminal value could be set based on a conservative assumption as to the probability of the agreement with Ryanair being renewed or similar conditions being agreed with other airlines. Ryanair considers that this would allow a lower bound for the profits generated jointly by the AMS and airport services agreements to be estimated, taking into account the uncertainty of the additional profits beyond the expiry of the airport services agreement.

(196) In support of this approach, the report summarises the results of studies on the effect of advertising on brand value. These studies recognise that advertising can build brand value and improve customer loyalty. In particular, according to the report, advertising on the Ryanair website increases brand visibility in the case of an airport. The report adds that smaller regional airports aiming to increase their traffic can particularly build their brand value by entering into advertising agreements with AMS.

(197) The report indicates that the cash-flow-based approach is preferable to a capitalisation approach in which the AMS expenditure would be treated as capital expenditure on an intangible asset (namely, the brand value of the airport). The marketing expenditure would be capitalised as an intangible asset and then amortised over the useful life of this asset, with a projected residual value on the planned expiry of the airport services agreement. This approach would not, however, take account of the additional benefits to the airport as a result of signing the airport services agreement with Ryanair, and estimating intangible asset value due to brand expenditure and the length of useful asset life is difficult.

5.1.3. AIRPORT MARKETING SERVICES (AMS)

(198) AMS states that it is a Ryanair subsidiary with a real commercial purpose, which was created in order to develop an activity that does not form part of Ryanair's core business. The bulk of its activity involves the provision of quality advertising space on the Ryanair website. AMS takes the view that it has not benefited from any State aid and that the airport operators acted in line with the MEIP towards AMS.

(199) AMS notes that it is not the only marketing service provider to Ryanair, since Ryanair has engaged several other companies to advertise on overhead bins or in its in-flight magazine. In addition, AMS asserts that other airlines also offer paid advertising on their websites.

(200) AMS maintains that, in principle, its marketing agreements with airports are negotiated and signed separately from Ryanair's agreements with those same airports and that Ryanair promotes itself. Moreover, AMS concludes marketing agreements with both public and private entities, such as public and private airports, tourism bodies, car rental companies, etc., and the advertising space provided by AMS is offered on a non-discriminatory basis to public and private advertisers. AMS highlights that these private customers, acting as market economy investors, clearly attach commercial value to AMS's services as they stand. In support of this assertion, AMS provides a report prepared by the independent consultancy Mindshare, in which the value is assessed based solely on the offer of web advertising, and not on the offer of air services by Ryanair.

(201) AMS notes that space on the Ryanair website is a scarce resource and that neither Ryanair nor AMS force airports to buy marketing services. AMS asserts that no State aid can result from its agreements with public airports since AMS could just as easily sell the website space to a private company at a comparable price.

(202) AMS disputes the Commission's view that the marketing agreements do not have a distinct purpose or interest and believes that the Commission has offered no legal or factual grounds calling into question the commercial justification for the airport's decision to sign an agreement with Ryanair. Consequently, AMS considers that it is unable to submit any relevant comments and exercise its rights of defence.

(203) AMS considers that, for regional airports, advertising is not a luxury but a must and that Ryanair's website is a particularly cost-effective alternative since it allows a captive audience to be targeted to optimum effect. AMS stresses that, when Ryanair started to operate the Nîmes-London route, the British public were generally unaware of Nîmes. Marketing was therefore important to maximise the number of inbound passengers.

(204) AMS considers that the agreement with Nîmes airport is similar to those signed by AMS with other airports and it refers to the decision of the Administrative Court of Marseille of 20 October 2009 in which the court found that the agreement between AMS and the airport allowed the latter to receive a real quid pro quo consisting of marketing services. AMS also notes that the Commission recognised in the Bratislava decision the value of its marketing services ([62]).

(205) Finally, AMS considers that its prices are based on objective criteria that are transparently indicated on its website. AMS confirms that the prices charged to Nîmes airport are consistent with its rate card.

5.2. *COMMENTS SUBMITTED BY INTERESTED THIRD PARTIES FOLLOWING THE PUBLICATION IN THE OFFICIAL JOURNAL OF THE EUROPEAN UNION OF A NOTICE INVITING MEMBER STATES AND INTERESTED THIRD PARTIES TO SUBMIT THEIR COMMENTS ON THE APPLICATION OF THE NEW GUIDELINES TO ONGOING CASES*

5.2.1. AIR FRANCE

(206) Air France questions the application of the new Guidelines to cases involving operating aid for airports, even where this aid was paid prior to the publication of said Guidelines, for a number of reasons:

— According to Air France, this retroactive application of the new Guidelines favours non-virtuous operators by legitimising conduct that did not comply with the rules applicable at the time. By contrast, this approach penalises operators who did comply with the previous guidelines by refraining from claiming public funds.

— Air France also maintains that the retroactive application of the new Guidelines to operating aid granted to airports before the new Guidelines entered into force is contrary to general principles of law and European case-law.

(207) Air France claims that the new Guidelines will have the effect of favouring new operators to the detriment of incumbent operators. By allowing a new airline to pay only the incremental cost associated with its activity, they will discriminate against incumbent operators at the airport, who will be subject to higher charges.

(208) Lastly, Air France points out that, although the condition of non-discriminatory accessibility to the infrastructure of an airport may seem easy to fulfil in theory, the situation is quite different in practice, with certain operating models being consciously disadvantaged.

5.2.2. VTAN

5.2.2.1. ***Operating aid***

(209) VTAN indicates that, if the Commission were to find that the flat-rate contribution received by VTAN over the 2007-2012 period under the CDSP for operating the civilian area of Nîmes airport did not satisfy either the four *Altmark* criteria or the conditions of the SGEI Decision, VTAN would maintain that this contribution was, however, compatible with the internal market based on the new Guidelines.

([62]) Commission Decision 2011/60/EU of 27 January 2010 on State aid C-12/08 (ex NN 74/07) — *Slovakia — Agreement between Bratislava Airport and Ryanair* (OJ L 27, 1.2.2011, p. 24), recital 114.

(210) VTAN considers that this contribution meets all the criteria set out in Section 5.1.2 of the new Guidelines. In fact:

— Nîmes airport participates in the economic and tourism development of the Gard department and therefore contributes to a well-defined objective of common interest,

— there was a need for state intervention, particularly as the new Guidelines indicate that airports with up to 200 000 passengers per annum may not be able to cover their operating costs to a large extent,

— the measure was granted in the form of an *ex ante* flat-rate contribution based on a forward estimate and was therefore appropriate,

— in the absence of the contribution, the level of activity at Nîmes airport would have been significantly reduced,

— VTAN proves that the proportionality of the aid criterion is met given that, over the 2007-2011 period, the aid amount was around the maximum of 80 % of the initial operating funding gap authorised in point 130 of the new Guidelines,

— VTAN explains that the airport is open to all potential users, which limits negative effects on competition and trade.

5.2.2.2. ***Investment aid***

(211) If the Commission finds that the equipment subsidies granted to VTAN constitute State aid, VTAN believes that, according to the new Guidelines, their compatibility will be assessed in the light of the criteria set out in the 2005 Guidelines.

5.2.3. TRANSPORT & ENVIRONMENT (T&E)

(212) This non-governmental organisation has made comments criticising the new Guidelines and the Commission decisions in the aviation sector to date, due to their harmful consequences for the environment.

6. **FRANCE'S COMMENTS**

6.1. *COMMENTS SUBMITTED BY FRANCE FOLLOWING THE OPENING OF THE FORMAL INVESTIGATION PROCEDURE*

6.1.1. GENERAL INTEREST OF THE AIRPORT

(213) France argues that all the activities of Nîmes airport (including the commercial aviation activities) constitute services of general interest, particularly the economic and tourism development of the region, such that no amount granted to the airport's operators can be regarded as State aid.

(214) Furthermore, France maintains that, in its analysis of the contractual relations between the airport's operators and Ryanair/AMS, the Commission has not taken into account the part of the payments made in respect of the public service missions assigned to the operators, in particular the promotion of the region and its economic and tourism development.

(215) France also indicates that the airbase promised economic growth for the region and that, after its closure in 2011, it was decided to create an industrial hub connected to the airport, which could generate a new industrial fabric in the Languedoc-Roussillon region. In this context, France notes that these activities in themselves justify the airport being kept operational.

6.1.2. MEASURE 1: ASSESSMENT OF THE FINANCIAL CONTRIBUTIONS MADE TO THE AIRPORT OPERATORS

(216) France considers that the 1994 Guidelines should be applied to all the infrastructure aid received before the 2005 Guidelines entered into force. In addition, in its view, the *Aéroports de Paris* case-law is not applicable to the present case as that ruling concerned a large European hub and dealt with a legal issue unconnected with the problem of airport financing.

(217) France takes the view that the Commission's application of this doctrine resulted in legal uncertainty about the applicable rules, from the aforementioned judgment being delivered to the new Guidelines being adopted. As a result, according to France, out of the EUR [5-9] million paid by the public authorities between 2000 and 2010, EUR [0,8-2] million should be excluded from the Commission analysis, given that this financing was granted in line with the 1994 Guidelines and before the 2005 Guidelines were adopted.

(218) With regard to the investments made during the CCI operating period, France makes clear that the entire airport, except for the passenger terminal, was used for the airbase's military activities, with the commercial activity being secondary. France states that, until 2004, the costs associated with the infrastructure and common services were partly rebilled to the CCI by the Ministry of Defence according to the percentage of commercial traffic within the airport's total traffic. The airbase subsequently rebilled in detail to the CCI the part of the costs attributable to the civilian operation of the airport. France also makes clear that the only work directly carried out by the CCI involved the expansion and adaptation of the passenger terminal and that this work was financed from the CCI's own resources or through loans taken out in its name.

(219) With regard to the investments made under the CDSP signed with VTAN, France notes that the CDSP provided for only part of these investments to be covered by the operator. Likewise, France notes that the short term of the delegation (six years) prevented an alternative solution and that no advantage was conferred on VTAN by the SMAN assuming responsibility for the investments. Finally, France explains that the equipment subsidy granted following closure of the airbase was intended to cover investments in sovereign activities and certification work on the airport that was not anticipated at the time when the CDSP was signed.

6.1.2.1. ***Clarifications on the infrastructure used to exercise the powers of a public authority***

(220) France considers that aircraft firefighting and wildlife hazard prevention services are tasks falling within the powers of a public authority that are essential for airport safety. France confirms that these services are funded by a parafiscal charge: the airport tax.

(221) France also stresses that the methods of financing sovereign tasks at Nîmes airport are not unique, but are similar to those used at other French airports. The only difference at Nîmes airport is that, when the airbase was operational, the tasks carried out by the Ministry of Defence were partly rebilled to the civilian operator, with the associated investment and operating costs then being financed by the airport tax. After the airbase closed, VTAN took over all the airport safety and security tasks, which led to a significant increase in the expenditure covered by the airport tax.

(222) France alleges that these transferred activities are in all cases safety/security tasks that do not, as a result, constitute economic activities and that therefore escape the application of the State aid rules.

(223) France also notes that the model for financing French airports through the airport tax and the establishment of the passenger rate of the airport tax are governed in detail by its national legislation. This model takes account of the overlap between normal operating constraints and those constraints specific to safety or security. As a result, France states that the financing of airport sovereign tasks is strictly regulated, which, in its view, prevents any overcompensation.

(224) As regards the investments in common infrastructure made between 2000 and 2011 by the Ministry of Defence and co-financed by the state and those local and regional authorities involved in managing the civilian area, France explains that the financing of the sovereign tasks of the airport's civilian and military areas was split in proportion to the number of flights. France also indicates that the largest investments were made in the runway, and were therefore essential military investments.

(225) As regards the costs of the aircraft rescue and firefighting service (*service de sauvetage et de lutte contre l'incendie des aéronefs sur les aérodromes* — 'SSLIA') and of creating an automatic parameter transmission system (*système de transmission automatique des paramètres* — 'STAP'), France indicates that these investments were not made in response to requests by Ryanair. The first service was essential to attract any airline (and not just Ryanair) to the airport, whereas the second service was necessary to transform the airport into a commercial base and integrate Nîmes within the Montpellier TMA (Terminal Manoeuvring Area).

6.1.2.2. ***Clarifications on the financing of the infrastructure and operation (excluding sovereign tasks)***

6.1.2.2.1. **Existence of a selective advantage**

6.1.2.2.1.1. *Examination of the private investor criterion*

(226) France stresses that the private investor criterion must be analysed based solely on the variable costs generated by the airport's commercial activity, given that all the airport's fixed costs are, in its view, included as part of the performance of the general interest tasks assigned to the airport.

6.1.2.2.1.2. *Examination with regard to the Altmark criteria for the VTAN operating period*

(227) France asserts that the sums paid by the SMAN to VTAN under the CDSP did not confer any advantage on VTAN because the flat-rate contribution payments were, in its view, solely intended to compensate for clearly defined public service obligations.

(228) Clearly defined public service obligations. France underlines the broad discretion that it enjoys in defining the activities that constitute an SGEI. France asserts in this respect that, given that Nîmes airport is a Category D airport, the entire airport constitutes an SGEI in accordance with the 2005 Guidelines. France underlines that the activities imposed on VTAN could have been included under the 'special task' heading as no economic operator would have been able to accept the concession under the proposed conditions.

(229) France also states that VTAN was not entrusted with developing the airport, but rather with the economic and tourism development of the region, and particularly with the development of the industrial hub situated nearby. Finally, France notes that the compensation paid to VTAN was not linked to the development of commercial routes, as indicated by the Commission. It was simply a flat-rate contribution of a fixed amount that depended on the economic situation referred to in the 'reference scenario' or in the 'downturn scenario'. As a result, France considers that a private operator acting in a market economy would not have been prepared to assume the tasks assigned to VTAN, under the same conditions, in the absence of compensation for the public service provided.

(230) Parameters established in advance for determining the amount of compensation. According to France, the rules governing the amount of compensation are clearly defined in the CDSP. France justifies the payment of additional amounts to the airport operator by the fact that a number of unexpected events, which could not have been envisaged at the time when the tender was submitted, occurred during the period of the delegation, in particular the dismantling of the airbase.

(231) Fair compensation for costs arising from public service obligations. France asserts that VTAN's accounts do not prove that the operator was overcompensated. The analysis conducted by France shows that, due to the small size of Nîmes airport, all the economic costs incurred by the operator (except for the activities covered by the airport tax, i. e. the costs of the sovereign tasks) should be taken into account when assessing the existence of overcompensation. As a result, France indicates that all the costs associated with the airport's operation (including the costs generated by Ryanair/AMS) must be regarded as falling within a public service activity. On that basis, France concludes that there was no overcompensation.

(232) Selection of the service provider. France also stresses that the operator was selected in accordance with the principle of legality, given that an invitation to tender notice was published in the French Official Gazette of Public Procurement Notices (*Bulletin Officiel des Annonces des Marchés Publics* — BOAMP) and in the *Official Journal of the European Union*. Veolia's tender was finally chosen because it was regarded as the most advantageous after its economic, service and financial aspects had been analysed.

6.1.2.2.1.3. *Examination of the effect on competition criterion*

(233) France considers that Nîmes airport has a specific catchment area that differs from those of Montpellier, Avignon and Marseille airports. As a result, public financing granted to the Nîmes airport operator is unlikely to affect competition. In that regard, France underlines that the catchment area of regional airports is limited to those airports that can be reached by car within a maximum of 60 minutes. France also believes that the journey time between two airports is not the only variable to be considered when determining the catchment area, because account must also be taken of the cost of the journey, which is a very important variable for the low-cost traffic predominating at Nîmes airport (see the table prepared by France in this recital).

	Montpellier	Avignon	Marseille
Distance (in kilometres)	63	68	115
Journey time by car	0h 49	1h 00	1h 21
Cost of return journey	EUR 19	EUR 38	EUR 36

(234) As regards Marseille airport, France considers that the cost of a return journey to the airport and the journey time (in excess of 60 minutes) are sufficient reasons for Marseille airport to be excluded from the catchment area of Nîmes airport or, at the very least, for the overlap between the activities of these two airports to be very limited, particularly with regard to the low-cost offer at Nîmes. Furthermore, France asserts that Nîmes airport is a Category D airport according to the 2005 Guidelines and that, in accordance with the Commission's decision-making practice, it cannot be regarded as a competitor to Marseille airport, given that the latter sees annual traffic of over 7 million passengers. Finally, France stresses that the type of traffic at Marseille airport (high proportion of business passengers) is completely different from Nîmes airport (tourist and seasonal traffic focused on the appeal of Nîmes and the Gard department) and that the Brussels-Charleroi destination is served by both airports, which, in its view, shows that these are not substitutes as far as users are concerned.

(235) As regards Avignon airport, France asserts that the return cost of EUR 40 is regarded as a negative factor by low-cost passengers. In addition, there is no overlap between the activities of Avignon airport and those of Nîmes airport because the destinations served from Avignon are different. France maintains that this argument is supported by a 2011 passenger survey, which allegedly highlighted the low ranking of Avignon airport among the other airports in the region (2,55 % of passengers from other airports in the region).

(236) As regards Montpellier airport, France considers that the two airports are not in the same catchment area given that (i) the Ryanair routes from Montpellier airport meet a tourist demand that is situated more to the west than to the east of the airport; and (ii) that Nîmes airport covers a different catchment area from part of Montpellier airport's catchment area (in particular the Cévennes, Uzège and the northeast of Gard/south of the Ardèche in the Rhône valley). Furthermore, France takes the view that the lack of overlap between the activities is confirmed by two facts, namely (i) the Brussels-Charleroi route operated from both airports allegedly shows that these are not substitutes as far as their users are concerned; and (ii) the traffic at Montpellier airport is clearly higher than that at Nîmes airport.

(237) In conclusion, France asserts that Nîmes airport is a Category D airport according to the 2005 Guidelines and that it has a specific catchment area that differs from those of Montpellier, Avignon and Marseille airports. As a result, public financing granted to the Nîmes airport operator is unlikely to affect competition.

6.1.2.2.1.4. *Compatibility with the internal market*

(238) In any event, France indicates that the measures were compatible with the internal market as all the financing was granted for infrastructure that was entirely used to provide a service of general economic interest, given the following:

— During the CCI operating period to February 2006: France considers that its national legislation confers general interest tasks on the chambers of commerce, such as economic development and improvement of the region's attractiveness. The obligation to ensure the continued operation of Nîmes airport stems from this framework. In addition, France indicates that the criterion according to which compensation must not exceed the costs necessary to perform public service missions was met given that (i) in its view, the compensation was limited to the SGEI costs stipulated in the Circular laying down the financial rules applicable to the CCI's operation ([63]); (ii) the CCI had a separate account for the airport's operation and (iii) its accounts were regularly checked by the competent authorities.

— During the CCI operating period from 1 February 2006 to 31 December 2006: in France's view, the aid was compatible given that (i) the delegation conditions were clearly defined by the delegation agreement of 1 February 2006; (ii) the delegatee was only authorised to receive subsidies corresponding to the level of expenditure incurred in operating the airport; (iii) the accounts were managed separately; and (iv) checks existed as the competent authorities could request a financial audit at any time.

— During the Veolia operating period: France refers to its previous analysis on the application of the *Altmark* criteria.

6.1.2.2.1.5. *Compatibility of the infrastructure aid with the criteria of the 2005 Guidelines*

(239) In any event, France considers that the financing of the investments complied with the 2005 Guidelines for the reasons set out above, in particular, (i) the measures met a clearly defined objective of general interest; (ii) the investments made were proportional to ensure optimum use of the infrastructure; (iii) there was a satisfactory prospect of medium-term passenger flows; (iv) the rates agreed with Ryanair could have been applied to any other airline making similar commitments to Ryanair; (v) there was no effect on trade; and (vi) the investments were essential to ensure the airport's survival.

6.1.2.3. ***Clarifications on the operational financing***

(240) France makes clear that the granting of repayable advances without interest charges cannot be treated as subsidies for the purpose of analysing their compatibility with the State aid rules. In this regard, France states that these advances were initially intended to be repaid and that these sums were actually partly repaid. France notes that the amount not repaid on the date of the opening decision has been left pending delivery of the judgment.

(241) France points out that certain advances cannot be analysed by the Commission because, in its view, the investigation is time-barred. As regards the other advances, it states that these involved compensation for the costs associated with an SGEI and were therefore compatible with the internal market.

6.1.3. MEASURE 2: ASSESSMENT OF THE AID POTENTIALLY GRANTED TO RYANAIR

(242) France takes the view that the Commission's approach of jointly examining the financial flows involved in the airport services agreements and marketing services agreements is fair.

([63]) Circular No 111 of 30 March 1992 laying down the budget, accounting and financial rules applicable to the ACFCI (Assembly of French Chambers of Commerce and Industry), CRCIs (regional chambers of commerce and industry), CCIs (chambers of commerce and industry) and GICs (inter-chamber groups).

(243) France has submitted the CCI's draft development incentive plan drawn up in 2005 and stresses that this was not ultimately adopted because it was not sufficient to convince airlines to operate from the airport. France also indicates that no regional or local authority agreed to participate in financing the plan.

(244) France considers that, although certain subsidies were granted towards the airport's operation, no aid was granted to help finance the agreements with Ryanair/AMS. France also notes that the charges offered to Ryanair were applied to all the airlines operating from the airport.

(245) France believes that, when calculating the profitability of a contractual relationship between an airline and the operator of an airport of the size of Nîmes, given the general interest tasks to be performed, the Commission should include only the variable costs attributable to that airline, thereby excluding the fixed costs and the costs associated with performing public service activities. On the income side, France indicates that the analysis should also include the non-aeronautical revenue generated.

(246) France also underlines that the payments made to AMS cannot be recorded as net losses in the income statement attributable to Ryanair because part of this expenditure is closely associated with carrying out the activities covered by the CDSP, in particular the economic and tourism development of the region. France also makes clear that, at the time when the agreement was signed with Ryanair, Veolia was regarded as a new entrant to the market. As a result, Veolia felt obliged to ensure Ryanair's presence at the airport in order to develop its activities. This is the same analysis as made of the agreements signed with the CCI.

(247) Finally, France considers that the marketing services agreements signed between the Nîmes airport operators and Ryanair are a common practice at most regional airports, and therefore invites the Commission to analyse these practices in a more global context.

6.2. *COMMENTS FROM FRANCE ON THE COMMENTS SUBMITTED BY INTERESTED THIRD PARTIES FOLLOWING THE OPENING OF THE FORMAL INVESTIGATION PROCEDURE*

(248) France did not respond to the comments submitted by interested third parties following the opening of the formal investigation procedure.

6.3. *COMMENTS FROM FRANCE ON THE APPLICATION OF THE NEW GUIDELINES TO THIS CASE*

(249) France notes that the new Guidelines are more flexible on operating aid than the previous guidelines. According to France, their retroactive application to all aid will therefore mean that previous situations at certain airports will be treated less punitively.

(250) France notes, however, that investment aid will be assessed more harshly than before under the new Guidelines as these lay down maximum aid intensities authorised according to the size of the airport.

6.4. *COMMENTS FROM FRANCE ON THE COMMENTS SUBMITTED BY INTERESTED THIRD PARTIES ON THE APPLICATION OF THE NEW GUIDELINES TO THIS CASE*

(251) France did not respond to the comments submitted by interested third parties on the application of the new Guidelines to this case.

7. ASSESSMENT OF THE MEASURES

7.1. *MEASURES GRANTED TO RYANAIR/AMS*

(252) As a reminder, the various measures granted to airlines that are examined in this decision are the agreements ([64]) referred to in recitals 79 to 102 ([65]).

7.1.1. EXISTENCE OF AID WITHIN THE MEANING OF ARTICLE 107(1) TFEU

(253) Under Article 107(1) TFEU, any aid granted by a Member State or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the Treaty.

(254) For a measure to constitute State aid, the following conditions must be met: (1) the measure in question is financed through state resources and is imputable to the state; (2) the measure confers an economic advantage; (3) the advantage conferred is selective; (4) the measure in question distorts or threatens to distort competition and may affect trade between Member States.

7.1.1.1. ***State resources and imputability***

7.1.1.1.1. **CCI operating period (2000-2006)**

(255) The various agreements with Ryanair and AMS that are subject to the formal investigation procedure and that were signed before 31 December 2006 were signed between the airlines, on the one hand, and the CCI, on the other hand.

(256) Chambers of commerce and industry are public bodies under French law. Under Article L.710-1 of the Commercial Code, 'Departmental bodies or chambers that are members of the network of chambers of commerce and industry shall each, in their capacity as intermediate state authorities, function as representatives of the interests of industry, commerce and services before public or foreign authorities. They shall act as the interface between the various stakeholders concerned and shall carry out their activities without prejudice to the representation tasks conferred on professional or interprofessional organisations by the laws and regulations in force or to the tasks carried out by local and regional authorities within the context of their administrative freedom. The network and each member departmental body or chamber shall contribute to the economic development, attractiveness and spatial planning of the regions, and shall also support businesses and their associations by fulfilling, under the conditions laid down by decree, any public service mission and any general interest task necessary for the fulfilment of such missions.'

(257) Article L.170-1 of the Commercial Code also stipulates: 'To this end, each departmental body or chamber in the network may undertake, in accordance with the applicable sectoral plans, where appropriate:

(1) general interest tasks conferred on it by laws and regulations;

(2) support, mentoring, liaison and advisory tasks with those starting up or taking over businesses and with businesses in general, in accordance with the applicable laws and regulations on competition law;

(3) a support and advisory task to encourage the international development of businesses and the export of their production, in partnership with the French Agency for International Business Development;

(4) a task to encourage initial or ongoing vocational training, in particular through public and private educational establishments that it sets up, manages or finances;

([64]) For the purposes of this decision, 'agreements' shall mean the various agreements concerned, whatever their legal form (including amendments, side letters, etc.).

([65]) The Commission notes that the first of these agreements is dated 11 April 2000 (first Ryanair/CCI agreement) whereas the Commission's investigation started with the letter of 16 March 2010, which covered this measure among others. As a result, the limitation period laid down by Article 15 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the treaty on the functioning of the European Union (OJ L 83, 27.3.1999, p. 1) was interrupted before it expired.

(5) a task to set up and operate facilities, particularly port and airport facilities;

(6) profit-making tasks conferred on it by a public entity or that may prove necessary for the fulfilment of its other tasks;

(7) any expert assessment, consultation or research task requested by public authorities on an issue relating to industry, commerce, services, economic development, vocational training or spatial planning, without prejudice to any work that it may initiate.'

(258) Article L.710-1 of the Commercial Code further stipulates: 'The Assembly of French Chambers of Commerce and Industry, regional chambers of commerce and industry, local chambers of commerce and industry and inter-chamber groups shall be public bodies supervised by the state and administered by elected managers.'

(259) This legislative provision has changed during the course of the period under review, i.e. from 2000 to 2010. However, its fundamental principles remain the same. Throughout this period, chambers of commerce and industry such as the CCI have remained public bodies set up by law, administered by elected managers and supervised by the state. Furthermore, as intermediate state authorities, they are entrusted with general interest tasks consisting of representing the interests of industry, commerce and services before national and foreign public authorities, contributing to the attractiveness and spatial planning of the regions and supporting business.

(260) Moreover, the list of tasks of chambers of commerce and industry, given in Article L.710-1 of the Commercial Code and cited in recital 257, shows that their raison d'être and primary objective is to undertake the general interest tasks conferred on them by law, i.e. mainly to represent the interests of industry, commerce and services before public authorities, support local business, and develop the attractiveness and spatial planning of their regions. The industrial and commercial activities of chambers of commerce and industry are ancillary to their general interest tasks and are designed to help undertake those tasks.

(261) It should also be noted that national laws lay down specific financing arrangements for chambers of commerce and industry, in particular in Article L.710-1 of the Commercial Code. The resources of chambers of commerce and industry therefore consist in particular of tax revenues (the tax to cover the costs of chambers of commerce and industry, established by Article 1600 of the General Tax Code), subsidies or even resources arising out of training and transport infrastructure operation activities. As a result, chambers of commerce and industry do not have to rely solely on their commercial revenue to cover their costs. This tends to corroborate the conclusion that the industrial and commercial activities of chambers of commerce and industry are ancillary to their general interest tasks and are designed to help undertake those tasks.

(262) France has confirmed this conclusion with regard to the CCI as it has stated as follows: '… All the CCIs therefore have the task of supporting businesses and citizens in their area. They offer them support in various respects: administration, development and information tools, training, establishment of common structures, infrastructure, etc. At a macroeconomic level, the role of the CCIs is to anticipate the future, offer an overall assessment of an area's future and defend its interests before the public authorities … In the context of these tasks, the operation of Nîmes Garons airport was particularly important in order to position the latter as a tool for growing and developing economic activity in the area … The signature of marketing services agreements with a low-cost airline therefore clearly falls within these tasks, firstly in terms of improving the region's attractiveness and secondly with regard to developing the aviation activities of Nîmes airport' ([66]).

([66]) Reply to the request for information of 23 December 2013.

(263) France has added that '… Furthermore, CCIs regularly conduct and finance lobbying actions to improve the attractiveness of their areas and promote new facilities. They also conduct specific actions to promote tourism through their participation in various regional and departmental structures in this area, particularly through the regional and departmental tourism committees provided for by Articles L.131-4 and L.132-3 of the Tourism Code … A policy of developing the attractiveness of an area requires a series of simultaneous actions to attract capital, markets, businesses, talent, students and tourists who will support local businesses and the region … This attractiveness also has an international dimension. Low-cost airlines with their websites can contribute to this policy … Lastly, the region's inhabitants are themselves demanding new routes, a diverse offer and, more specifically, "low-cost" services so that they can more easily travel to Europe at the lowest cost' ([67]).

(264) These statements unequivocally confirm that the main raison d'être and objective of the CCI are, as for all chambers of commerce and industry, to serve the interests of local businesses as a whole and to contribute to the economic development and attractiveness of the area. France's aforementioned statements also indicate that, for a chamber of commerce and industry such as the CCI, a commercial activity such as the operation of Nîmes airport is not pursued in the interests of profitability, but as a necessary counterpart to the general interest tasks with which this body is invested by law.

(265) In the light of all the above, chambers of commerce and industry such as the CCI must be regarded as public authorities and all their decisions, just like those of the national government or local and regional authorities, must be regarded as 'imputable to the state', within the meaning of the case-law on State aid ([68]), with their resources constituting state resources ([69]). Contrary to what the Operators maintain in their comments, it is irrelevant in this respect that chambers of commerce and industry are managed by persons elected by traders and business leaders and representatives. Chambers of commerce and industry are, in this respect, like local and regional authorities, which are managed by local elected officials independent of the state (in the strict sense), and not by officials appointed by other public authorities. Moreover, national parliaments are also composed of elected representatives. However, these parliaments form one of the basic public authorities in a democratic state. The degree of control exercised by the state (in the strict sense) over the activities of chambers of commerce and industry is entirely irrelevant as these bodies are themselves public authorities.

(266) The situation of chambers of commerce and industry is therefore different from that of 'traditional' public undertakings, with regard to which the Court of Justice stated in the *Stardust Marine* judgment ([70]): 'Even if the state is in a position to control a public undertaking and to exercise a dominant influence over its operations, actual exercise of that control in a particular case cannot be automatically presumed. A public undertaking may act with more or less independence, according to the degree of autonomy left to it by the state … Therefore, the mere fact that a public undertaking is under state control is not sufficient for measures taken by that undertaking, such as the financial support measures in question here, to be imputed to the state. It is also necessary to examine whether the public authorities must be regarded as having been involved, in one way or another, in the adoption of those measures'.

(267) In the case of a measure taken by a public undertaking that has the primary vocation of carrying out an economic activity, it must be determined whether the public authorities controlling that undertaking, for example due to the capital share that they hold in said undertaking, are involved in the measure in question. The situation of a chamber of commerce and industry is different in that such a body is itself part of the public administration, or an 'intermediate state authority', and therefore a public authority created by law to satisfy general interests. As a result, in order to determine whether a decision of a chamber of commerce and industry is imputable to the state (as broadly defined by the case-law on State aid), it is not necessary to determine whether another public authority (for example, the state in the strict sense or a local authority) has been involved in the decision in question. In reality, such a decision necessarily meets the imputability criterion.

([67]) Ibid.

([68]) For example, judgments in *Italian Republic* v *Commission*, C-303/88, EU:C:1991:136, paragraph 11, and of 12 December 1996, *Compagnie nationale Air France* v *Commission*, T-358/94, EU:T:1996:194, paragraphs 58 to 61.

([69]) See, in this respect, the Commission Decision of 14 July 2004 in Case C-25/2004 — *Germany — DVB-T in Berlin-Brandenburg*, paragraph 20.

([70]) Judgment in *France* v *Commission*, C-482/99, EU:C:2002:294, paragraph 52.

(268) This approach has previously been taken by the Commission in its decision-making practice. Accordingly, the Commission stated with regard to the Chamber of Commerce and Industry of Var that, owing to its status as a public body under French law, it pursues its activity in a defined geographical area, is managed by elected members and has tax resources collected from undertakings registered in the Register of Trade and Companies, and therefore falls within the category of 'public authorities' within the meaning of Commission Directive 2000/52/EC ([71]). It is not therefore necessary to determine whether the measure is imputable to the state within the meaning of the *Stardust Marine* case-law ([72]). This analysis also applies to the CCI in this case.

(269) On the subject of the imputability to the state of the agreements covered by the formal investigation procedure and signed by the CCI, the Operators have maintained that the Commission should prove *in concreto* the state's involvement (in the strict sense) in the measures in question. Moreover, according to the Operators, the state's supervision (in the strict sense) of the CCI is insufficient for the decisions to sign the agreements in question to be imputable to the state. In the light of the above, this argument does not stand up as the CCI is itself a public authority whose decisions are necessarily imputable to the state within the meaning of the case-law on State aid, regardless of the role played in its decisions by other public authorities, in particular the state in the strict sense.

(270) Ryanair's comments on this point are substantially similar to those of the CCI. Ryanair has disputed the imputability to the state of the various measures in question, by arguing that the state (in the strict sense) did not have any influence over the decisions of the chambers of commerce and industry, but simply had a supervisory role whereby measures such as the agreements in question did not require its approval. Ryanair has also cited a Council of State opinion that suggests that chambers of commerce and industry are independent from the state in the strict sense. According to this opinion, the fact that chambers of commerce and industry 'answer to the state, in so far as any public body must technically answer to a legal person, does not in itself imply any subordination'. For all the reasons given in the above recitals, this argument is without merit as there is no need to ascertain whether any public authorities, other than the CCI, are involved in the latter's decisions, as it has been proven that the chamber of commerce is part of the public administration.

(271) Ryanair has also mentioned the fact that not all the resources of chambers of commerce and industry come from taxes, but that they partly come from revenue generated by their economic activities, such as the operation of airports. This argument also does not stand up. In fact, numerous public authorities are in the same situation, in that they pursue economic activities, either directly or through bodies that they control (for example, credit activities or the provision of postal or transport services) and use the revenue from those activities to finance themselves. The pursuit of economic activities by a body does not call into question its status as a public authority. On the contrary, as indicated in recital 261, the fact that a body is at least partly funded by taxes tends to indicate that this body should be regarded as a public authority.

(272) Likewise, the CCI's argument that it operates Nîmes airport as a private investor within the meaning of the applicable case-law ([73]) is without merit, as the measures in question were adopted by a public authority and are therefore necessarily imputable to the state ([74]).

(273) The Operators have indicated in their comments that 'the decisions under analysis were taken by the CCI in its capacity as operator of Nîmes airport and set out the conditions of the commercial relations with the airlines. These decisions were therefore clearly taken in the context of activities carried out in competition with private operators. It is sufficient to note in this regard that the current operator of Nîmes airport — VTAN — is a private company'. This argument is without merit because, as indicated above, the measures in question are imputable to the CCI as a whole, and not just to the airport arm, and the CCI is a public authority whose decisions are all imputable to the state within the meaning of the State aid case-law.

([71]) Commission Directive 2000/52/EC of 26 July 2000 amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings (OJ L 193, 29.7.2000, p. 75).

([72]) See the Commission Decision of 22 June 2006 in Case N 563/2005 — *France — Aide à la compagnie Ryanair pour la ligne aérienne desservant Toulon et Londres*, paragraph 16.

([73]) Operators' comments on the opening decision, p. 5.

([74]) Moreover, the Commission stresses that, for the purpose of applying the rules on State aid, a distinction should not be made between the CCI and the specific arm of the CCI that operates the airport, given that the arm operating Nîmes airport does not have its own legal personality distinct from that of the CCI and is simply a link in the chain of services within the CCI that has no decision-making autonomy other than in relation to the day-to-day operation of the airport. Accordingly, the agreement of 11 April 2000, the airport services agreements and marketing service agreements of 10 October 2005 and the amendment of 30 January 2006 were all signed by the president of the CCI. With regard to the correspondence exchanged between the end of 2001 and the beginning of 2002 and in 2004, which made amendments to the agreement of 11 April 2000, this did not bear the signature of the CCI president. However, France has indicated that 'We can therefore conclude that the agreements and amendments with Ryanair come under the industrial and commercial services management powers entrusted to the President …' (Reply to the request for information of 20 March 2014). Furthermore, neither France nor the third parties have argued that the measures subject to the formal investigation procedure should be imputed solely to this arm of the CCI.

(274) In conclusion, the various agreements signed by the CCI and covered by this assessment are imputable to the state and involve the use of state resources.

7.1.1.1.2. **VTAN operating period (2007-2011)**

(275) The various agreements subject to the formal investigation procedure and signed from 2007 onwards were signed by VTAN. In terms of its ownership, VTAN is a subsidiary of a privately owned group. This point was particularly highlighted by certain third parties to dispute the involvement of state resources in the various agreements, as well as the imputability of these measures to the state.

(276) This argument could possibly be accepted in a traditional concession arrangement in which the conceding owner places its assets at the disposal of a concession-holder in return for fair remuneration, without intervening in any way in the concession-holder's commercial policy and without financing its operation.

(277) However, this is not the arrangement applicable in this case. For a number of reasons detailed in the following recitals, VTAN's conduct towards Ryanair and AMS must not be considered in isolation from that of the SMAN, which is the group of public authorities acting as concession authority in terms of granting and implementing the public service delegation. On the one hand, VTAN's commercial policy towards Ryanair and AMS was largely influenced by a framework established by the SMAN, which framework led VTAN to deviate from the normal conduct of an airport operator free to decide its commercial policy and motivated by the prospect of profits. On the other hand, state resources from the SMAN were used to finance the airport's operation, and therefore the advantages granted to Ryanair and AMS, the existence of which will be proven further on.

(278) With regard to the SMAN's influence over VTAN's commercial policy towards Ryanair and AMS, it should firstly be noted that the CDSP entrusted VTAN not only with the airport's operation but also with 'the development of traffic' ([75]). This provision is not an empty phrase. In fact, France and the Operators have recognised that the CDSP entrusted VTAN with the task of 'economic and tourism development of the area', which 'requires (i) an increase in passenger flows, generating income and jobs for the regional economy …; and (ii) the development of the enterprise zone situated adjacent to the airport' ([76]).

(279) The CDSP therefore constrained and influenced VTAN's commercial policy towards the airlines, particularly as the development of traffic is not in itself the ultimate goal of a private airport operator entirely free to decide its commercial policy.

(280) The goal of such a private operator is in fact to maximise its profitability. However, maximising profitability is not compatible in all circumstances with the development of traffic. As a result, under certain conditions, the requirements of airlines likely to use the airport are such that signing an agreement with them may degrade the airport operator's profitability. In such a case, a private operator entirely free to decide its commercial policy would prefer to refrain from such agreements, and give up the associated traffic, rather than degrade its profitability. Conversely, an operator bound by a traffic development objective would be ready to conclude such agreements, particularly if it were to receive, from the conceding owner, a subsidy ensuring the operation's financial stability with a reasonable profit margin.

(281) It should be noted that, when VTAN became the airport operator and throughout the period of the various agreements in question, Ryanair was the only airline offering scheduled flights from Nîmes airport. If VTAN had refused to sign some of these agreements for profitability reasons, it would have run the risk of Ryanair withdrawing routes, reducing frequencies or even terminating all activity from Nîmes airport. Such a choice by VTAN would have clearly clashed with the traffic development objective imposed on it by the CDSP. As a result, through the CDSP, the SMAN influenced VTAN's conduct towards Ryanair and AMS.

([75]) Article 1 of the CDSP.
([76]) France's comments of 27 July 2012 on the opening decision, pp. 27-28. Operators' comments of 24 September 2012 on the opening decision, paragraphs 39-40.

(282) It is not only the CDSP that should be taken into account in this respect, but also the invitation to tender process that led to the airport's operation being awarded to Veolia Transport. Accordingly, the SMAN's invitation to tender notice indicated that one of the aims of the delegation was to 'promote the airport by developing traffic, services and the enterprise zone' ([77]). It also stated that one of the tender selection criteria was 'the commercial development policy'. Interested undertakings were therefore clearly invited to commit, in their tenders, to implementing an active traffic development policy. They were particularly encouraged to do so as the SMAN offered a financial contribution ensuring the operation's financial stability. This contribution was in fact intended to compensate for the incremental losses that might occur as a result of attractive commercial conditions being offered to airlines in order to maximise traffic.

(283) In the various documents that it sent to the SMAN during the invitation to tender process, Veolia Transport was clearly trying to produce a tender that responded to the traffic development objective set by the SMAN. Veolia Transport indicated in particular that it 'share[d] with the authority the desire to increase use of its transport networks and platforms and the associated benefits', and it highlighted its performance in terms of increasing the use of other transport infrastructures that it operated. Veolia Transport added that it would 'play a key role in local development' and that it would prioritise, in agreement with the authority, several objectives including 'showcasing the local heritage and the region' ([78]).

(284) In these documents, Veolia Transport also indicated a desire 'to attract a large number of additional aircraft and passengers' and to make the airport into 'a leading player in the local and regional economy', aware that 'the dynamics of air traffic drive and support the region's economic activity, by creating around 100 direct and indirect jobs and by injecting approximately EUR 70 million per year into the local economy, mainly the tourism sector'. Veolia Transport therefore submitted a marketing plan aimed at 'confirming and reinforcing the airport as an economic hub by developing its traffic, which is an essential condition for maintaining and increasing jobs and for ensuring its contribution to the local economy, but also by developing associated activities that are vitally important to the region, such as tourism and property, industrial and tertiary development'. This plan particularly involved the following main lines of action: (i) consolidation of Ryanair's activity and its development by launching a fifth route; and (ii) attraction of other airlines by systematically targeting those airlines likely to serve the airport and by adopting a cost-neutral airline incentive policy. In this context, Veolia Transport provided traffic growth targets. It also stated: 'In conclusion, we reaffirm our desire to operate and promote the airport in partnership with the SMAN in order to develop its economic and tourism impact on the region' ([79]).

(285) It is therefore clear that Veolia Transport's response to the invitation to tender was influenced by the traffic development objective set by the SMAN and, more generally, by the local economic development objectives pursued by the SMAN, which Veolia Transport could not ignore and even shared at the time of preparing its tender. The development of traffic and the consolidation and development of Ryanair's activity were goals that Veolia Transport mentioned in its tender and that stemmed directly from the SMAN's objectives. If the SMAN had been content to select an operator without setting a traffic development objective, Veolia Transport would have had no reason to commit to such an objective or to the consolidation and development of Ryanair's activity. It would have simply proposed the lowest possible amount of the flat-rate contribution, within the bounds necessary to ensure a reasonable profit, in order to gain the concession.

(286) In an invitation to tender process such as this one, the successful tenderer's tender necessarily binds the latter for the whole term of the concession. This is true in both legal terms and in other respects. An undertaking that sets objectives and makes commitments in response to an invitation to tender organised by a local authority and that subsequently acts in a manner contrary to those objectives and commitments runs the risk of its reputation being compromised among local authorities. An undertaking such as Veolia Transport, which in 2007 was looking to establish itself in the airport operation market, would not have run such a risk. As a result, VTAN's conduct towards Ryanair/AMS from 2007 was fundamentally influenced by the traffic development objective set by the SMAN and by the fact that the latter had selected, to operate the airport, an undertaking that had submitted a tender clearly designed to respond to that objective.

([77]) Annex 6.2 to France's letter of 27 July 2012.

([78]) Annex 8 to the CDSP, page 15, whose evocative title ('the constant pursuit of increased use') should be highlighted in this assessment.

([79]) France's letter of 19 February 2014 (body of the text and Annexes 2014-1-3 and 2014-1-4 a and b).

(287) This influence is evident from the fact that Veolia Transport knew, during the invitation to tender process, that the commercial relations with Ryanair were likely to harm the profitability of the airport's operation. The documents that Veolia Transport has submitted in this procedure indicate for example: 'Moreover, in the long term, the replacement of Ryanair's activity (company benefiting from particularly favourable conditions at the airport) could be positively offset by the arrival of companies likely to accept less economically burdensome conditions for the airport operator …' ([80]); 'The transfer of the risk, above […] %, by the Delegating Authority is justified by the strategic nature for the Gard economy of the tourist traffic brought by Ryanair; in fact, as we explained in our tender, the arrival of this company (under particularly advantageous conditions) has negative economic implications for the airport's operation, but quite clearly positive implications for the local economy' ([81]); 'Ryanair typically chooses small or medium-sized airports, particularly in France, with which the company negotiates extremely advantageous material and/or financial conditions' ([82]); 'All in all, adding together the main agreement and the Airport Marketing Services agreement, the operations with Ryanair result in a negative turnover (between EUR […] thousand and EUR […] thousand according to the bid and traffic configurations, i.e. an average cost to the airport per outbound passenger of around EUR […] to EUR […] excluding tax per head)' ([83]). These various statements tend to confirm that, if VTAN had been free to operate the airport with the sole aim of maximising its profits, it would not have been prepared to pursue with Ryanair/AMS a commercial relationship such as that established by the CCI and that it regarded as a net cost to the airport. It may therefore be concluded that VTAN was prepared to pursue this relationship under similar conditions only in the light of the SMAN's traffic development objectives, VTAN's commitments made to the latter in this respect in order to win the airport operation concession, and the flat-rate contribution ensuring the concession's financial stability.

(288) It should be recalled that the profitability of the concession for VTAN relied on the flat-rate operating subsidy paid by the SMAN, which therefore participated directly in financing the airport's operation. The existence of this subsidy, granted by the SMAN, demonstrates the latter's influence over VTAN's commercial relations with Ryanair/AMS. Without this subsidy, it is likely that no operator would have agreed to operate the airport under a concession for which the economic model was based on a traffic development objective and relations with an airline that were likely to result in a negative margin for the airport's operation. The granting of this subsidy, which is imputable to the SMAN, was therefore one of the elements that allowed the various agreements covered by this investigation to be signed from 2007.

(289) It should be noted in this respect that the amount of the contribution was calculated (and accepted by the SMAN) based on a provisional budget drawn up by Veolia Transport, which incorporated the costs and revenues associated with the agreements in force between the CCI and Ryanair/AMS, and VTAN's best estimates as regards their renegotiation. The SMAN therefore granted VTAN a contribution that was designed to allow Ryanair's activity to continue under similar conditions to those under which this airline had offered its services from Nîmes airport when the CCI was operating the airport.

(290) Furthermore, it should be noted that the CDSP provided for the flat-rate contribution to be adjusted to a certain extent according to Ryanair's activity. As a result, the sum of EUR 1,3 million per year envisaged in the 'reference scenario' was to be reduced to EUR 1,1 million in a 'downturn scenario' corresponding to a reduction in Ryanair's activity likely to allow the airport's second staff team to be axed. Two lessons can be drawn from this adjustment. Firstly, this adjustment illustrates the fact that, in 2007 and in the light of the CCI's experience, Veolia Transport and the SMAN expected that a reduction in Ryanair traffic would result in an improvement in the airport's profitability. Otherwise they would have planned to increase the flat-rate contribution, and not reduce it, in the downturn scenario. This once again illustrates the fact that the SMAN's objectives and the terms of the CDSP led VTAN to adopt a commercial policy towards Ryanair that it would have regarded as aberrant and would not have pursued if it had been entirely free to determine this policy.

(291) The second lesson to be drawn from this adjustment is that, for the SMAN, this represented a further way of influencing VTAN's conduct towards Ryanair, by reducing the incentives for VTAN to adopt decisions likely to result in a reduction in Ryanair traffic.

([80]) Annex 2014-1-1 to France's letter of 19 February 2013, p. 9.
([81]) Annex 2014-1-1 to France's letter of 19 February 2014, p. 15.
([82]) Annex 2014-1-4 b to France's letter of 19 February 2014, p. 13.
([83]) Annex 2014-1-4 b to France's letter of 19 February 2014, p. 16.

(292) In the light of all the above, it is clear that, through the invitation to tender process, the objectives set in the CDSP and the flat-rate contribution established by the latter, the SMAN exerted a decisive influence over the decisions taken by VTAN with regard to Ryanair and AMS. It cannot be disputed, as highlighted by France and the Operators, that VTAN enjoyed a certain freedom when negotiating its agreements with Ryanair and AMS ([84]). In fact, it cannot be clearly established, in the light of the facts on record, that the SMAN made specific decisions on the contents of the various agreements. Moreover, as underlined in substance by France, the Operators and Ryanair, there was no automatic link between the amount of the flat-rate contribution and the parameters of the agreements negotiated with Ryanair and AMS, such that VTAN was not deprived of any incentive to limit the 'net costs' caused by the agreements signed with Ryanair.

(293) However, in view of the facts presented in this section, the framework laid down by the SMAN through the invitation to tender process, the objectives set in the CDSP and the flat-rate contribution had a sufficiently decisive influence on VTAN's conduct towards Ryanair and AMS that the agreements in question can be regarded, pursuant to the State aid case-law, as imputable to the state, even though, in terms of its ownership, VTAN forms part of a privately owned group.

(294) France and the Operators have stated that Nîmes airport was the first regional airport operated by Veolia Transport. They consider that this position as a new entrant justified the need for VTAN to ensure Ryanair's presence and develop the airport, if necessary through an initial loss, in order to allow it to acquire the experience needed to develop its airport operation activity. However, this argument does not invalidate the conclusion that, without the flat-rate contribution or the traffic objective set by the SMAN and transcribed into commitments made by Veolia Transport in response to the invitation to tender, Veolia Transport would not have agreed to become the airport operator or, if it had agreed to do so, to sign the agreements in question with Ryanair/AMS.

(295) Neither France nor VTAN have provided any analysis showing that, in such a scenario, the 'net cost' caused by the agreements with Ryanair/AMS would have been offset by future benefits resulting for the Veolia Transport group from this initial airport operation experience. Furthermore, neither France nor VTAN have explained why, in such a scenario, VTAN could not have chosen to acquire similar experience at other airports where the 'net cost' would have been lower, or even negative. The argument put forward by France and the Operators regarding Veolia Transport's position as a new entrant at Nîmes airport does not therefore alter the fact that there is a clear link between, on the one hand, the objectives set by the SMAN in the invitation to tender and in the CDSP and the flat-rate contribution and, on the other hand, the agreements signed by VTAN with Ryanair and AMS.

(296) Added to the above considerations are three more minor and non-essential elements that reinforce the merits of this conclusion. Firstly, according to France, in its proposals submitted to the SMAN in the invitation to tender process, 'VTAN indicated that, if it were delegated the public service, it would remain in close contact with the SMAN during the negotiation phase with Ryanair in order to inform the SMAN about the progress of the discussions, and proposed that, if necessary and at the SMAN's discretion, the latter could also participate directly in the negotiation' ([85]). According to France, the SMAN never expressed a desire to become involved in these negotiations. However, the simple fact that it had the option to do so gave it a certain degree of influence over these negotiations. For example, it could have intervened if VTAN had tried to impose conditions on Ryanair that may have prompted the latter to reduce its traffic at Nîmes airport.

(297) Secondly, it was the SMAN that was responsible for setting the airport charges, pursuant to Article 28 of the CDSP. As a result, even though VTAN negotiated the other elements of its commercial relations with the airlines (prices of the ground handling services, marketing payment), the SMAN had an influence over the commercial relations between VTAN and Ryanair as the agreements signed with the latter referred, with regard to the airport charges, to the general airport charges set by the SMAN.

([84]) Under Article 11 of the CDSP, 'the Delegatee shall enjoy total freedom in negotiating the agreements that it signs with aviation users and shall assume the consequences, particularly financial, of those agreements on the [CDSP]'. However, it was implicit, but evident, in that provision that this 'total freedom' could be exercised only within the general framework laid down by the CDSP and the commitments made by Veolia Transport in response to the invitation to tender, which, as explained above, were such as to constrain and influence VTAN's conduct to a considerable extent.

([85]) France's letter of 19 February 2014.

(298) Thirdly, it is clear from the CDSP that most of the investment to be made at Nîmes airport was the responsibility of the SMAN and its member authorities. In this way, the SMAN exerted a certain degree of influence over the airport's operation, as it was in a position to improve the quality or capacity of the airport infrastructures in order to make them more attractive to the airlines and thus improve the profitability of this operation for VTAN.

(299) It is clear from all the above that there is a significant and undeniable link between, on the one hand, the terms of the CDSP, as agreed by the SMAN with Veolia Transport in accordance with the SMAN's traffic development objectives, the invitation to tender process organised by the SMAN and the flat-rate contribution granted by the SMAN and, on the other hand, the agreements signed by VTAN with Ryanair and AMS. Although this causal link is not absolute and exclusive, in that the agreements in question also partly stem from a degree of commercial freedom enjoyed by VTAN, it is strong enough to prove that the public authorities and the SMAN in particular were clearly involved in the measures in question. Consequently, these measures must be regarded as imputable to the SMAN, and therefore to the state in the broad sense.

(300) As indicated in recital 288, the financial stability of the airport's operation relied on the flat-rate contribution granted by the SMAN, the amount of which was determined, among other aspects, according to the parameters of the commercial relationship between the CCI and Ryanair/AMS in 2006 and therefore in order to allow Ryanair's activity to continue under similar conditions to those under which this airline had offered its services from Nîmes airport when the CCI was operating the airport. The advantages conferred by these agreements, the existence of which shall be proven in the following section, were therefore financed through this flat-rate contribution, and consequently through state resources.

(301) In conclusion, the various agreements signed by VTAN and covered by this assessment are imputable to the state and involve the use of state resources.

7.1.1.2. ***Selective advantages granted to Ryanair/AMS***

(302) In order to determine whether a state measure constitutes aid, it is necessary to establish whether the recipient undertaking receives an economic advantage that it would not have obtained under normal market conditions ([86]).

(303) In order to make this assessment, the market economy operator (MEO) test should be applied to the measures in question. This involves determining whether a hypothetical MEO acting in place of the Operators and motivated by the prospect of profits would have entered into similar agreements.

(304) In order to correctly apply this test, a number of questions should be answered first, particularly the following:

— Should the conduct of the CCI-Airport be assessed in isolation, or should its conduct in fact be assessed together with that of the CCI as a whole? Likewise, should the conduct of VTAN be assessed in isolation, or should its conduct in fact be assessed together with that of the SMAN?

— Should a marketing services agreement and an airport services agreement that were signed at the same time be analysed separately or together?

— In applying the MEO test to the marketing services agreements, should the CCI and VTAN be regarded as having respectively acted as operators of Nîmes airport or as entities purchasing marketing services in the context of a local economic development mission, regardless of their function as airport operator?

— What benefits could a hypothetical MEO have expected from the marketing services agreements?

— What, for the purposes of applying the MEO test, is the relevance of comparing the terms of the airport services agreements covered by the formal investigation procedure with the airport charges invoiced at other airports?

([86]) See, in particular, judgment in *Spain* v *Commission*, C-342/96, EU:C:1999:210, paragraph 41.

(305) After answering these questions, the Commission will apply the MEO test to the various measures in question.

7.1.1.2.1. **Joint assessment of the conduct of the CCI-Airport and the CCI as a whole**

(306) In applying the MEO test, the conduct of the CCI as a whole, and not just that of its arm operating the airport, should be taken into account. As explained above (see footnote 69), the CCI-Airport did not have its own legal personality distinct from that of the CCI and the various agreements were signed by the CCI president or under his control. The CCI-Airport was not a distinct entity with its own decision-making autonomy, other than with regard to the day-to-day operation of the airport. It therefore follows that the conduct of the CCI-Airport and the CCI as a whole must be assessed together, in terms of their relations with the airlines and their subsidiaries, in order to apply the MEO test.

7.1.1.2.2. **Joint assessment of the conduct of VTAN and the SMAN**

(307) As explained in detail in the assessment of the imputability to the state of the agreements signed by VTAN, through the invitation to tender process organised by the SMAN in 2006, the objectives set in the CDSP and the flat-rate contribution established by the latter and granted by the SMAN, the latter exerted a decisive influence over the decisions taken by VTAN with regard to Ryanair and AMS.

(308) As a result, the conduct of VTAN and the SMAN must be assessed together, in terms of their relations with the airlines and their subsidiaries, in order to apply the MEO test.

(309) In this respect, it is clear from the judgment of the General Court in the *Charleroi* case that, when applying the MEO test, the conduct of two distinct entities towards a third party may, in certain circumstances, have to be assessed jointly, as if these two entities were one entity, where there are 'close links' between them ([87]). Unlike in the *Charleroi* case, in the present case there is no control relationship, in the sense of ownership, between the SMAN and VTAN. However, as shown in paragraph 275 et seq., there are sufficiently close economic links between these two entities, likely to substantially influence VTAN's conduct towards Ryanair/AMS, for the measures in question to be regarded as the result of the conduct of both these two entities.

7.1.1.2.3. **Joint analysis of the airport services agreements and marketing services agreements**

(310) For the purposes of applying the MEO test, the Commission must determine whether the airport services agreements and marketing services agreements should be assessed together.

(311) In the opening decision, the Commission considered as a preliminary point that each marketing services agreement should be assessed jointly with the airport services agreement signed at the same time, for the purposes of applying the MEO test. This approach particularly involves each of the following sets of agreements being treated as a single measure:

7.1.1.2.3.1. *CCI operating period (2000-2006):*

— airport services agreement signed on 10 October 2005 with Ryanair and marketing services agreement signed on the same date with AMS ([88]),

7.1.1.2.3.2. *VTAN operating period (2007-2012):*

— airport services agreement signed on 2 January 2007 with Ryanair and marketing services agreement signed on the same date with AMS,

([87]) Judgment of 17 December 2008, *Ryanair Ltd* v *Commission*, T-196/04, EU:T:2008:585, paragraph 88 and paragraphs 57 to 60.
([88]) The latter was the first marketing services agreement signed with Ryanair or AMS from among those covered by this assessment.

— amendment of 1 August 2007 to the marketing services agreement of 2 January 2007 and implicit airport services agreement applying the terms of the airport services agreement of 2 January 2007 to the Nîmes-Charleroi route, the operation of which during the 2007-2008 winter season constituted, according to France, the counterpart to the payment for the additional marketing services stipulated by this amendment,

— airport services agreement signed on 1 November 2007 with Ryanair and marketing services agreement signed on the same date with AMS,

— airport services agreement signed on 27 August 2008 with Ryanair and marketing services agreement signed on the same date with AMS,

— amendment of 25 August 2009 to the airport services agreement of 27 August 2008 and amendment of 25 August 2009 to the marketing services agreement of 27 August 2008,

— amendment of 30 November 2010 to the marketing services agreement of 27 August 2008 and implicit airport services agreement applying the terms of the airport services agreement of 27 January 2008 to the Nîmes-Liverpool route, the operation of which constituted, according to France, the counterpart to the payment for the additional marketing services stipulated by this amendment ([89]).

(312) France has stated that it agrees with the approach taken in the opening decision to analyse together the airport services agreements and marketing services agreements signed at the same time. On the other hand, certain interested third parties, particularly the Operators and Ryanair, question this approach as they consider that the marketing services agreements should be analysed separately.

(313) However, the facts on record confirm that the approach taken in the opening decision, and approved by France, is well-founded. Firstly, each marketing services agreement was signed on the same date as an airport services agreement, except in the case of certain amendments to existing marketing services agreements. However, the amendments in question amended marketing services agreements that were themselves signed at the same time as airport services agreements. Furthermore, certain amendments to marketing services agreements were concluded in return for Ryanair's operation of certain routes or frequencies. This was the case, for example, with the amendment of 30 November 2010, which provided for additional marketing payments that, according to France, were the counterpart to Ryanair's operation of a route to Liverpool. In the light of the general reasoning developed in this section, an implicit airport services agreement applying, to the routes or frequencies in question, the airport charges and ground handling charges resulting from the existing airport services agreement corresponding to the marketing services agreement amended by the amendment in question can be associated with this amendment.

(314) Moreover, the two types of agreement were signed by the same parties. AMS is a wholly-owned subsidiary of Ryanair and its managers are senior Ryanair executives. AMS acts in Ryanair's interests and under its control, and AMS's profits go to Ryanair in the form of dividends or increased company value. Moreover, as will be detailed further on, the various marketing services agreements were connected with the operation of certain air routes by Ryanair from Nîmes airport. The marketing services agreements in fact indicate that they are rooted in Ryanair's commitment to operate these routes, and they were also signed at the same time as airport services agreements with Ryanair for these same routes. Consequently, the fact that the marketing services agreements were signed by the airport's operators with AMS and not Ryanair cannot prevent a marketing services agreement and an airport services agreement that were signed at the same time from being regarded as forming a single transaction, particularly for the purpose of analysing these agreements in the light of the MEO test, and in the context of this analysis, Ryanair and AMS from being regarded as forming a single economic entity.

([89]) It should be noted that the amendment of 18 August 2010 may be difficult to tie to an implicit or explicit airport services agreement and will be assessed separately.

(315) Lastly, a number of other facts, set out in recitals 313 to 314, reveal additional very close links between, on the one hand, each marketing services agreement and, on the other hand, the corresponding airport services agreement. Firstly, France has itself highlighted the link between the marketing payments and the routes operated by Ryanair: 'The marketing aid formed an integral part of the route development plan put in place by the CCI and relevant authorities. For these authorities, this was a support tool aimed at attracting new passengers through new services. Moreover, the airline made commitments in terms of both the number of aircraft made available and the number of passengers carried. The achievement of these load factor targets ensured a direct return on these sums for the local economy' ([90]). It is clear from this statement that the marketing payments were an integral part of the commercial relationship between the CCI and Ryanair for the operation and development of routes. It is also clear that their purpose was not to generally promote travel to Nîmes and its region, but to specifically promote the use of Ryanair's transport services, which was the only airline offering scheduled flights from Nîmes airport from 2003 onwards. This logic is also valid for VTAN, which clearly pursued the same policy as the CCI, spurred on by the SMAN.

(316) Moreover, the Commission notes that the provisional operating accounts, based on which the flat-rate contribution granted to VTAN from 1 January 2007 was calculated, take into account the payments made to Ryanair and AMS, with fixed amounts of around EUR 1,6 million per year on average throughout the term of the CDSP, in the reference scenario. The Commission therefore understands that the marketing payments made to Ryanair/AMS were regarded by VTAN and the SMAN as an integral part of the commercial framework between the airport and Ryanair.

(317) An examination of each marketing services agreement signed by AMS also reveals the extremely close link between each of these agreements and the airport services agreement signed in parallel by Ryanair.

(318) Accordingly, the marketing services agreement signed between the CCI and AMS on 10 October 2005 was concluded for a term of five years, just like the airport services agreement signed on the same date. Moreover, it stipulates, in relation to its object, that it 'is based on Ryanair's commitment' to operate certain routes ([91]), which are identical to those referred to in the airport services agreement. This wording unequivocally shows that the marketing services agreement would very likely not have existed if Ryanair had not operated the routes covered by the airport services agreement.

(319) The preamble to the marketing services agreement also states as follows:'… [Airport Marketing Services] is the only company that has the potential and technical ability to target large numbers of potential Ryanair passengers in order to promote the tourist and business attractions in the region' ([92]). This wording tends to confirm that the primary objective of the marketing services agreement is not to promote Nîmes and its region in general, but, much more specifically, to maximise sales of Ryanair tickets to Nîmes by promoting this region.

(320) Furthermore, according to the marketing services agreement, the services to be provided by AMS consist in inserting messages and links on the Nîmes destination page of the Ryanair website, and inserting a link to the website designated by the CCI on the English homepage of the same website. However, the Nîmes destination page of the Ryanair website is mainly targeted at people who have already decided to use or are likely to consider using Ryanair's services to Nîmes. As for the website homepage, this is certainly targeted at a much wider audience, but only its English version is covered by the marketing services agreement. This further indicates that the marketing services are essentially designed to promote Ryanair's services between Nîmes and London, and not equally passenger traffic to Nîmes and its region. If they were designed to promote Nîmes and its region to all tourists and business travellers likely to be interested in the region, the CCI would in all likelihood have asked for the link to a website of its choosing to be placed on all, or at least several versions of, the Ryanair website homepage, and not just the English version.

([90]) France's letter of 27 February 2012.

([91]) Article 1 of the marketing services agreement, relating to its object, stipulates that this agreement is based on Ryanair's commitment to operate a weekly air service between Nîmes airport and London, as well as an additional service during the summer … and a service between Nîmes and Liverpool on four days out of seven, and on Ryanair's commitment to announce another service from Nîmes at the end of 2005 …

([92]) Original English.

(321) Lastly, the marketing services agreement of 10 October 2005 stipulates about itself as follows: 'As it is rooted in Ryanair presence in Nimes airport, this agreement will be terminated if Ryanair ceases to be present in Nimes airport for any reason or if the airport services agreement between Ryanair and [CCI] dated 10 October 2005 is terminated' ([93]). This provision clearly links the applicability of the two agreements and therefore highlights the link between them.

(322) Similar elements can be found in the marketing services agreements signed by VTAN and AMS on 2 January 2007, 1 November 2007 and 27 August 2008 ([94]). Each of these agreements was in fact concluded for an identical term to that of the airport services agreement signed on the same date. Moreover, each of these agreements explicitly stipulates that it is rooted in Ryanair's commitment to operate certain routes, accompanied by certain frequencies, which are identical to those indicated in the corresponding airport services agreement. The preamble of each of these agreements also states as follows: '… [Airport Marketing Services] is the only company that has the potential and technical ability to target large numbers of potential Ryanair passengers in order to promote the tourist and business attractions in the region' ([95]).

(323) Furthermore, according to these marketing services agreements, the services to be provided by AMS consist in inserting messages and links on the Nîmes destination page of the Ryanair website, inserting a link to the website designated by the CCI on the English, Belgian and Dutch homepages of the same website (quite clearly reflecting the points of origin of the Ryanair air routes to Nîmes airport) and, in certain cases, inserting a 'button' on the 'Discover Europe' page of the website. The 'Discover Europe' page is easily accessible from all versions of the Ryanair homepage. Although it promotes the attractions of various destinations by means of 'buttons', it specifically promotes Ryanair flights to those destinations. The marketing services are therefore, once again, primarily targeted at those people who are most likely to use Ryanair's services to Nîmes.

(324) On reading the amendment of 30 November 2010 and the email exchanges between Ryanair and VTAN that gave rise to this amendment, and in the light of the explanations provided by France, it appears that Ryanair made the operation of three weekly services instead of two on the Nîmes-Liverpool route during the 2011 summer season conditional upon the additional marketing payment of EUR [35 000-65 000] stipulated in the amendment. An email from a Ryanair representative to a VTAN representative dated 29 November 2010 indicates in particular: 'Yes the … frequencies will be there for … and in return you will give us the …' ([96]). This email illustrates the close link between Ryanair and AMS, by showing that Ryanair was negotiating conditions with VTAN that concerned both the airport services and the marketing services provided and billed by AMS. Once again, the existence of a close link between the amendment and certain routes operated by Ryanair (in this case, Nîmes-Liverpool) cannot be disputed. The same is true for the amendment of 1 August 2007, which, according to France, 'was a condition for the Ryanair service to Charleroi to be maintained for the 2007-2008 winter season'.

(325) These elements of the various marketing services agreements show that the marketing services stipulated in these agreements are, in terms of both their duration and their nature, closely linked to the air transport services offered by Ryanair, as defined in the marketing services agreements and covered by the corresponding airport services agreements. The marketing services agreements even indicate that they are rooted in Ryanair's commitment to operate the transport services in question. Far from being designed to generally and equally increase travel to Nîmes and its region by tourists and business travellers, the marketing services specifically target those persons likely to use the Ryanair transport services covered by the marketing services agreements, and therefore have the primary objective of promoting those services.

([93]) Ibid.
([94]) The other marketing services agreements signed by VTAN and covered by the formal investigation procedure are simply amendments to these main agreements and are therefore, just like the latter, indissociably linked to certain routes operated by Ryanair and to the airport services agreements governing those routes.
([95]) See footnote 92.
([96]) Ibid.

(326) The marketing services agreements are therefore indissociable from the airport services agreements signed at the same time and from the air transport services that form their purpose. The facts presented in the above recitals also indicate that, in the absence of the air routes in question (and therefore the associated airport services agreements), the marketing services agreements would not have been signed. As stated in recital 321, the marketing services agreements explicitly indicate that they are rooted in Ryanair's commitment to operate certain air routes. They also provide for marketing services that are essentially intended to promote those routes.

(327) In this respect, the Operators' argument that these two types of agreement should be analysed separately because they 'have very different objects and the conditions of one do not in any way depend on the conditions of the other' ([97]) is without merit. It is in fact clear from the above that the marketing services agreements form an integral part, together with the airport services agreements, of the commercial relations between Ryanair and the Operators with regard to the operation of those air routes covered by these two types of agreement.

(328) Furthermore, it seems that, before signing the marketing services agreements in question, the Operators did not organise an invitation to tender nor did they consult various potential providers in order to compare their offers. More generally, they did not consider any providers other than AMS for the services in question. This confirms the existence of the close link of dependency between the marketing services agreements and the air routes operated by Ryanair from Nîmes airport. If the marketing services agreements had been truly independent of the airport services agreements, the Operators would in all likelihood have consulted other providers in addition to AMS.

(329) In conclusion, given all the above, each marketing services agreement and the corresponding airport services agreement should be analysed as a single measure in order to determine whether this agreement constitutes State aid.

7.1.1.2.4. **Method of applying the MEO test to the Operators in order to assess the marketing services agreements**

(330) In order to apply the MEO test to the marketing services agreements, the hypothetical MEO to be used for analysing the conduct of the Operators must be identified.

(331) One approach would be to consider that the Operators signed the marketing services agreements as airport operators ([98]), and therefore to compare their conduct with that of a hypothetical airport operator motivated by the prospect of profits.

(332) Another approach would be to consider that the Operators acted as bodies entrusted with a general interest task, namely the economic development of Nîmes and its region, and that they purchased these marketing services in order to perform that task, regardless of their capacity as the operator of Nîmes airport. This second approach would be based in the fact that the CCI is invested by law with such an economic development task, whilst, according to France, VTAN was entrusted with this task by the SMAN through the CDSP. As indicated above, according to France and the Operators, the CDSP entrusted VTAN with the task of the 'economic and tourism development of the area'.

(333) In the context of this second approach, according to the case-law, it would need to be verified, firstly, that the services in question met the 'actual needs' of the public purchaser ([99]) and, secondly, that they were purchased at a price equal to or below a 'market price' ([100]), i.e. that an MEO motivated by the prospect of profits and needing equivalent services (without necessarily being an airport operator) would have been prepared to accept similar conditions to those accepted by the Operators.

([97]) Operators' comments on the opening decision, p. 34.

([98]) Without prejudice to any public policy objectives of local economic development that the Operators might pursue in signing the agreements in question.

([99]) In this analysis, VTAN can be regarded as a 'public purchaser' given that, according to France, the CDSP entrusted it with a general interest task of economic and tourism development.

([100]) See, for example, judgment of 28 January 1999, *BAI* v *Commission*, T-14/96, EU:T:1999:12, paragraphs 75-76, and judgment of 5 August 2003, *P & O European Ferries (Vizcaya), SA and Diputación Foral de Vizcaya* v *Commission*, T-116/01 and T-118/01, EU:T:2003:217, paragraph 117.

(334) The comments of certain interested third parties tend to favour the second approach, at least implicitly. In particular, notably in its study of 20 December 2013, Ryanair has provided information intended to show that the price of the AMS marketing services did not exceed what may be regarded as a market price for such services. Further to this argument, it has noted that airport operators cannot be distinguished from other types of AMS customer.

(335) As regards the period after 31 December 2006, the Operators have provided information along the same lines, in particular: 'it should be recalled that, during the VTAN operating period, all or part of the AMS expenditure was actually incurred within the context of VTAN's public service mission to promote the area and its economic and tourism development'.

(336) The Commission considers that, out of the two approaches indicated in the above recitals, the second one must be rejected because it inherently ignores the indissociable nature of the airport services agreements and corresponding marketing services agreements, as found previously. This approach would essentially mean considering that the Operators signed the marketing services agreements without any regard to the air routes offered by Ryanair from the airport that they operated, and that they would have signed these agreements even in the absence of the air routes in question and the corresponding airport services agreements. For the reasons detailed above, such an assumption is highly unlikely.

(337) Moreover, even if this second approach were used, it would not lead to the conclusion that the marketing services agreements did not confer an economic advantage on Ryanair and AMS.

(338) As noted in recital 333, in order for purchases made by a public entity not to confer an economic advantage on the seller, it is not enough for them to have been made at a price equal to or below 'market price'. They must also meet an 'actual need' of the public purchaser.

(339) It cannot be categorically ruled out that, in performing its economic development task for Nîmes and its region, an entity such as the CCI or VTAN may feel the need to resort to commercial providers in order to promote the area. However, in the present case, this promotion targets the commercial activities of two clearly defined undertakings, namely Ryanair and the Nîmes airport operator.

(340) A public entity cannot consider that marketing services mainly promoting the activities of one or more clearly defined undertakings form part of this entity's specific task of promoting local economic development. It is logical for such an entity to start from the assumption that local undertakings must carry out or finance their own marketing operations, and that its own actions are limited to the general promotion of the area and local economic fabric, without targeting specific undertakings.

(341) Any other approach would mean considering that an entity responsible for local economic development could, without such measures constituting State aid, purchase marketing services that mainly promote the products or services of certain locally established undertakings, on the grounds that these services encourage local economic development and that they are purchased at 'market price'. Such an approach would circumvent Article 107(1) TFEU.

(342) As a result, it seems that the marketing services purchased by the Operators from AMS/Ryanair cannot be regarded as meeting an 'actual need' of the Operators as entities invested with a local economic development task. This conclusion is confirmed by certain information provided by France, according to which, in particular, 'it is clearly not common practice for CCIs that do not operate an airport to purchase marketing services from airlines' ([101]). This statement also tends to confirm that, with regard to the agreements signed before 2007, the marketing services in question were actually purchased by the CCI in its capacity as Nîmes airport operator, and not as an entity responsible for a local economic development task.

([101]) See footnote 85.

(343) Consequently, applying the second approach envisaged in recital 332 would lead to the conclusion that the marketing services agreements confer an economic advantage on the undertakings having provided these services and on the airlines having directly benefited from the marketing services. As a result, based on this approach, the marketing services agreements signed with AMS would constitute aid to AMS as the provider of the marketing services and aid to Ryanair as the direct and main beneficiary of these services.

(344) Furthermore, when an entity makes purchases in the performance of its general interest tasks, it is normally expected to minimise its expenditure by organising an invitation to tender, or at the very least by consulting several providers and comparing their offers. This is particularly the case with highly individual goods or services for which there are no clear market price benchmarks, which is plainly the case with marketing services. However, it seems that the Operators did not consider any providers other than AMS for the marketing services in question. This finding confirms that the second approach is unsuitable.

(345) Furthermore, France has indicated that the French CCIs conduct 'specific actions to promote tourism through their participation in various regional and departmental structures in this area, particularly through the regional and departmental tourism committees' ([102]). However, the marketing services agreements signed by the CCI, which particularly aimed, according to the Operators, to promote the tourism and business attractions of Nîmes and its region, were signed directly by the CCI, without any intervention by local structures responsible for tourism promotion. This is an additional factor that tends to confirm that the CCI signed the marketing services agreements prior to 31 December 2006 as the airport operator. This conclusion is further unequivocally confirmed by the Operators in the following passage of their comments: 'in this case, the decisions under analysis were taken by the CCI in its capacity as operator of Nîmes airport and set out the conditions of the commercial relations with the airlines'.

(346) In order to apply the MEO test, the conduct of the CCI and VTAN respectively should therefore be compared to a hypothetical MEO, motivated by the prospect of profits and operating Nîmes airport in their place.

7.1.1.2.4.1. *Benefits that an MEO could have expected from the marketing services agreements and price that it would have been willing to pay for those services*

(347) It is clear from all the above that, in order to apply the MEO test to the marketing services agreements in question, these agreements must be analysed together with the corresponding airport services agreements, as they form a single transaction with the latter ([103]), and that the Operator's conduct must be assessed in relation to the conduct of a hypothetical MEO operating Nîmes airport in their place.

(348) In analysing each of the transactions in question, the benefits that this hypothetical MEO, motivated by the prospect of profits, could expect from the marketing services should be determined. This analysis should not take into account the general impact of such services on the region's tourism and economic activity. Only the effects of these services on the airport's profitability may be considered, as it is these alone that would be taken into account by the hypothetical MEO used in this analysis.

(349) Marketing services may boost passenger traffic on the air routes covered by the marketing services agreements and corresponding airport services agreements, as they are designed to promote these routes. Although this effect primarily benefits the airline, it does also benefit the airport operator. An increase in passenger traffic may lead, for the airport operator, to an increase in revenue from certain airport charges and from non-aeronautical revenue from car parks, restaurants and other businesses.

([102]) Ibid.

([103]) A given marketing services agreement must be analysed together with the corresponding airport services agreement as they form a single transaction. Nevertheless, there are as many separate transactions as there are 'pairs' of marketing services agreements and airport services agreements.

(350) There can therefore be no doubt that a hypothetical MEO operating Nîmes airport would have taken this positive effect into account when considering entering into a marketing services agreement and the corresponding airport services agreement. The MEO would have taken into account the impact of the air routes in question on its future revenues and costs by, in this context, forecasting a number of passengers using these routes that would have reflected the positive effect of the marketing services. This effect would have been assessed for the entire operating period of the routes in question, as set out in the airport services agreement and marketing services agreement.

(351) The Commission accepted this point during the procedure as, when it invited France to reconstruct the revenue and cost forecasts that an MEO would have made before entering into marketing services agreements and airport services agreements, it proposed that France take into account the effects of the marketing services agreements on expected traffic. When an airport operator enters into an agreement for the promotion of certain air routes, it is normal to predict a fairly high load factor ([104]) for the air routes in question, which may be taken into account when assessing future revenues. In this respect, the Commission notes Ryanair's opinion that marketing services agreements do not generate only a cost for the airport operator, but also, potentially, a benefit.

(352) It should be determined whether a hypothetical MEO could reasonably expect and quantify benefits other than those resulting from the positive effect on passenger traffic for the air routes covered by the marketing services agreement for the operating period of those routes, as set out in the marketing services agreement or airport services agreement.

(353) Certain interested third parties support this argument, in particular Ryanair in its study of 17 January 2014 ([105]). This study of 17 January 2014 is based on the premise that marketing services purchased by an airport operator may help to improve the airport's brand image and, as a result, to sustainably increase the number of passengers using this airport, and not just the numbers on the air routes covered by the marketing services agreement and the airport services agreement over the operating period set out in these agreements. In particular, Ryanair found in its study that these marketing services may have a lasting positive impact on passenger traffic at the airport, even after the marketing services agreement has expired.

(354) It should first be noted that there is nothing in the records to suggest that, when the marketing services agreements covered by the formal investigation procedure were signed, the Operators ever considered, and still less quantified, any positive effects of the marketing services agreements going beyond the air routes covered by these agreements or, in terms of time, extending beyond the expiry of these agreements. Moreover, neither France nor the Operators have proposed any method for estimating the possible value that a hypothetical MEO operating Nîmes airport would have given to these effects when assessing whether to enter into the marketing services agreements and airport services agreements.

(355) As stated above, the marketing services purchased from AMS were mainly targeted at those people likely to use the air routes covered by the marketing services agreement, namely only those scheduled air routes offered to Nîmes.

(356) Furthermore, the sustainability of these effects also seems very doubtful. It is possible that advertising Nîmes and its region on the Ryanair website may have encouraged people visiting this website to buy Ryanair tickets to Nîmes when this advertising was first posted or just after. However, it is unlikely that the effect of this advertising on visitors lasted or had an influence on their ticket purchases for more than a few weeks after it was posted on the Ryanair website. An advertising campaign is more likely to have a sustainable effect when the promotional activities involve one or more advertising media to which consumers are regularly exposed over a given period. For example, an advertising campaign on general television and radio stations, various websites and/or various billboards displayed outdoors or inside public places may have such a sustainable effect if consumers are passively and repeatedly exposed to these media. However, promotional activities limited to certain pages of Ryanair's website alone are unlikely to have an effect that lasts much beyond the end of the promotion.

([104]) The load factor is defined as the proportion of seats filled on aircraft used to operate the air route in question.
([105]) *How should AMS Agreements be treated within the profitability analysis as part of the market economy operator test?* Oxera, 17 January 2014.

(357) It is very likely that most people will not visit Ryanair's website often enough to leave them with a lasting impression of the advertising for this region. This observation is well supported by two factors.

(358) Firstly, under the various marketing services agreements, the promotion of the Nîmes region on Ryanair's homepage was limited to the presence of a single link to a website designated by the Operators for limited and, in some cases, very brief periods, in particular:

— seven days per year for five years according to the 2005 agreement, increased by 26 and three days per year in line with the respective launch of the third and fourth routes stipulated by the agreement,

— 27 days on the English page and 60 days on the Belgian and Dutch pages according to the agreement of 2 January 2007,

— 33 days on the English page and 60 days on the Belgian and Dutch pages according to the agreement of 1 November 2007, and

— 32 days on the English page and 60 days on the Belgian and Dutch pages according to the agreement of 27 August 2008.

(359) Both the nature of these promotional activities (presence of a single link with limited promotional value) and their short lifespan would have significantly limited the effect of these activities beyond the end of the promotion, particularly as these activities were limited to Ryanair's website alone and were not supported by any other media. In other words, these promotional activities were highly unlikely to leave those people exposed to these activities with a lasting impression of the advertising in question and a lasting interest in Nîmes and its region.

(360) Secondly, the other marketing activities included in the agreements signed with AMS involved the Nîmes destination page of the website and the 'Discover Europe' page, where it was only intended to insert a 'button', as well as email advertising. As a general rule, this last type of promotional activity is targeted only at an audience that is by definition limited, without recipients being frequently exposed to this advertising. Furthermore, with regard to the Nîmes destination page of the Ryanair website, this is likely to be even less visited by a given person than the website's homepage, since it is devoted to a specific Ryanair destination and not to all its activities. It is therefore unlikely to leave those persons accessing this page with a lasting impression of the attractions of Nîmes and its region. Moreover, the Nîmes page of the Ryanair website is very likely to be accessed, most of the time, as a result of a potential interest in this destination or in Ryanair's services to this destination. The advertising on this page is therefore unlikely to generate new interest in this destination among people unaware of or not having any interest in this destination. As regards the 'Discover Europe' page, this promotes a large number of destinations by means of 'buttons'. Although it undoubtedly allows potential travellers to make a short-term choice between several travel destinations, it is unlikely to generate a lasting interest in a particular destination from among all those presented.

(361) As a result, although the marketing services may have increased passenger traffic on the air routes covered by the marketing services agreements for the period of those services, it is very likely that this effect after this period was zero or negligible.

(362) Moreover, the Ryanair studies of 17 and 31 January 2014 indicate that the likelihood of the benefits of the marketing services agreements going beyond the air routes covered by these agreements or lasting beyond the operating period of these routes, as set out in the marketing services and airport services agreements, was extremely small and could not be quantified with a degree of reliability that would be considered sufficient by a prudent MEO.

(363) Accordingly, for example, the study of 17 January 2014 indicates as follows: 'However future incremental profits beyond the scheduled expiry of the Airport Service Agreement are inherently uncertain' ([106]). Furthermore, this study proposes two methods for the *ex ante* assessment of the positive effects of marketing services agreements: a 'cash flow' approach and a 'capitalisation' approach.

(364) The 'cash flow' approach involves assessing the benefits of the marketing services agreements and airport services agreements in the form of future revenues generated for the airport operator by the marketing services and by the airport services agreement, minus corresponding costs. In the 'capitalisation' approach, improvement of the airport's brand image through the marketing services is treated as an intangible asset, acquired for the price set out in the marketing services agreement.

(365) However, the study highlights the major difficulties presented by the 'capitalisation' approach and shows that the results produced by this method are unreliable. It suggests that the 'cash flow' approach would be better. In particular, the study states: 'The capitalisation approach should only take into account the proportion of marketing expenditure that is attributable to the intangible asset base of an airport. However, it may be difficult to identify the proportion of marketing expenditure that is targeted towards generating expected future revenues for the airport (i. e., an investment in the intangible asset base of the airport) as opposed to generating current revenues for the airport' ([107]). It also stresses that 'In order to implement the capitalisation-based approach, it is necessary to estimate the average length of time that an airport would be able to retain a customer due to the AMS marketing campaign. In practice, it would be very difficult to estimate the average period of customer retention following an AMS campaign due to insufficient data' ([108]).

(366) The study of 31 January 2014 proposes a practical application of the 'cash flow' approach. In this approach, the benefits of the marketing services agreements and airport services agreements that last even after the marketing services agreement has expired are expressed as a 'terminal value' calculated on the agreement's expiry date. This terminal value is calculated based on the incremental profits expected from the airport services and marketing services agreements in the final year of application of the airport services agreement. These profits are projected into the following period, the term of which is equal to the term of the airport services agreement, adjusted by the growth rate of the air transport market in Europe. They are also adjusted by a probability factor designed to reflect the capacity of the airport services agreement and the marketing services agreement to contribute to the airport's profits after they have expired. According to the study of 31 January 2014, this capacity to produce lasting benefits depends on various factors '… including greater prominence and a stronger brand, alongside network externalities and repeat passengers' ([109]), although no details are given about these factors. Moreover, this method takes into account a discount rate that reflects capital costs.

(367) The study suggests a probability factor of 30 %, which it considers prudent. However, this highly theoretical study does not provide any serious quantitative or qualitative evidence for this factor. It does not base itself on any facts relating to Ryanair's activities, air transport markets or airport services to substantiate this rate of 30 %. It does not establish any link between this rate and the factors that it mentions in passing (prominence, strong brand, network externalities and repeat passengers) and that are supposed to extend the benefits of the airport services and marketing services agreements beyond their expiry dates. Finally, it does not in any way base itself on the specific content of the marketing services provided for in the various agreements with AMS when analysing to what extent these services could influence the factors mentioned above.

(368) Moreover, it does not prove that there is any likelihood that, on the expiry of an airport services agreement and marketing services agreement, the profits generated by these agreements for the airport operator in the final year of their application will continue in the future. Likewise, it provides no evidence that the growth rate of the air transport market in Europe is a useful indicator for measuring the impact of an airport services agreement and a marketing services agreement for a given airport.

([106]) See footnote 92.
([107]) Ibid.
([108]) Ibid.
([109]) Ibid.

(369) A 'terminal value' calculated using the method suggested by Ryanair would therefore be highly unlikely to be taken into account by a prudent MEO when deciding whether or not to enter into an agreement.

(370) The study of 31 January 2014 therefore shows that a 'cash flow' method would lead to only very imprecise and unreliable results, as would the 'capitalisation' method.

(371) Moreover, neither France nor any interested third party has provided any evidence that the method put forward by Ryanair in this study, or any other method aiming to take into account and quantify the benefits extending beyond the expiry of the airport services agreements and marketing services agreements, has been successfully used by operators of regional airports comparable to Nîmes. France has not for that matter commented on the studies of 17 and 31 January 2014 and has not therefore approved their conclusions.

(372) Moreover, as stated above, the marketing services considered by the formal investigation procedure clearly target people likely to use the routes covered by the marketing services agreements. If these routes are not renewed on the expiry of the airport services agreement, it is unlikely that the marketing services will continue to have a positive effect on passenger traffic at the airport after the expiry date. It is very difficult for an airport operator to assess the likelihood of an airline continuing to operate a route on the expiry of the term to which it has committed itself in the airport services agreement. Low-cost airlines, in particular, have shown that, when it comes to opening and closing routes, they are very responsive to market conditions which, more often than not, change very quickly. Therefore, when entering into a transaction such as those being examined in this formal investigation procedure, a prudent MEO could not rely on an airline being willing to extend the operation of the route in question on the expiry of the agreement.

(373) Furthermore, it should be noted that a terminal value calculated using the method proposed by Ryanair in the study of 31 January 2014 will be positive (and therefore will have a positive effect on the projected return on the airport services agreement and marketing services agreement) only where the incremental profit expected from these agreements in the final year of application of the airport services agreement is positive. This method involves taking the incremental profit expected in the final year of application of the airport services agreement and projecting it into the future by applying two factors. The first factor is the overall growth of the European air transport market and reflects the expected traffic growth. The second is a factor of 30 % that approximately represents the probability of the agreements that are due to expire promoting the future signature of similar agreements likely to generate similar financial flows. As a result, if the future incremental profit expected in the final year of application of the airport services agreement is negative, the terminal value will also be negative (or at most will be zero), which indicates that the signature of agreements similar to those that have recently expired will, just like those agreements, each year erode the airport's profitability.

(374) The study of 31 January 2014 very briefly considers this scenario, by simply indicating in a footnote, without any comments or explanations, that '… no terminal value can be calculated if incremental profits net of AMS payments are negative in the last year of the period under consideration' ([110]). However, as will be shown further on, all the agreements in this case involve projected incremental flows that have a negative net present value each year, and not just overall. As a result, for these agreements, a 'terminal value' calculated using the method proposed by Ryanair would be zero or even negative. Taking account of such a terminal value would not therefore call into question the finding that the various agreements involve an economic advantage.

(375) In conclusion, it is clear from the above that the only benefit that a prudent MEO would expect from a marketing services agreement, and that it would take into account and quantify when deciding whether or not to enter into such an agreement, together with an airport services agreement, would be that the marketing services would have a positive effect on the number of passengers using the routes covered by the agreements in question for the operating period of those routes, as set out in the agreements. Any other benefits would be deemed too uncertain to be taken into account and quantified, and there is nothing to suggest that they were taken into account by the Operators.

([110]) Study of 31 January 2014, footnote 17, original English.

7.1.1.2.4.2. *Relevance of comparing the terms of the airport services agreements covered by the formal investigation procedure with the airport charges invoiced at other airports*

(376) Under the new Guidelines for applying the MEO test, the existence of aid to an airline using a particular airport can, in principle, be excluded where the price charged for the airport services corresponds to the market price or it can be demonstrated through an *ex ante* analysis, that is to say one based on information available when the aid is granted and on developments foreseeable at that time, that the airport/airline arrangement will lead to a positive incremental profit contribution for the airport ([111]) and that it forms part of an overall strategy intended to lead the airport to profitability at least in the long term.

(377) Furthermore, according to the new Guidelines, 'When assessing airport/airline arrangements, the Commission will also take into account the extent to which the arrangements under assessment can be considered part of the implementation of an overall strategy of the airport expected to lead to profitability at least in the long term' ([112]).

(378) However, under the first approach (comparison with a 'market price'), the Commission seriously doubts that, at the present time, an appropriate benchmark can be identified to establish a true market price for services provided by airports and considers an *ex ante* incremental profitability analysis to be the most relevant criterion for the assessment of arrangements concluded by airports with individual airlines ([113]).

(379) The Commission considers it appropriate to reiterate in the context of this analysis that, following the adoption of the new Guidelines, both France and the interested parties were invited to submit comments on the application of those guidelines to the present case. In the event, neither France nor the interested parties disputed the substance of the Commission's approach according to which, where an appropriate benchmark cannot be identified to establish a true market price for the services provided by airports to airlines, the most relevant criterion for assessing the arrangements concluded between these two parties is an *ex ante* incremental profitability analysis.

(380) It should be noted that, in general, the application of the MEO test based on an average price observed in other similar markets may prove helpful where a market price can be reasonably identified or deduced from other market indicators. However, this method may not be as relevant in the case of airport services. This is because the costs and revenues structure tends to differ significantly from one airport to another. These costs and revenues depend on the airport's state of development, number of airlines operating from/to the airport, available capacity in terms of passenger traffic, state of the infrastructure and related investments, regulatory framework, which may vary from one Member State to another, and historical debts and obligations of the airport ([114]).

(381) Moreover, the liberalisation of the air transport market complicates any purely comparative analysis. As the present case amply demonstrates, commercial arrangements between airports and airlines are not necessarily based on a list of public prices for individual services. Rather, these commercial relationships vary widely. They include sharing risks with regard to passenger traffic and any related commercial and financial liability, standard incentive schemes and changing the spread of risks over the term of the agreements. As a result, it is difficult to compare transactions based on a price per rotation or per passenger.

(382) Ryanair considers that the MEO test can be applied using certain European airports as a benchmark. In this respect, it believes that certain European airports are substitutable for Nîmes airport due to their similarities and has provided a study ([115]) comparing the airport charges paid by Ryanair at Nîmes airport with the airport charges paid at those airports regarded as comparable. It concludes that the charges paid at Nîmes are not significantly lower.

([111]) New Guidelines, point 53.
([112]) New Guidelines, point 66.
([113]) New Guidelines, points 59, 61 and 66.
([114]) Decision 2011/60/EU, recitals 88 and 89.
([115]) Study of 25 June 2012 carried out by Oxera.

(383) However, the method adopted by Ryanair is ineffective in so far as it limits itself to the services and payments resulting from the airport services agreements without taking into account the marketing services agreements. As previously indicated, the two types of agreement are indissociable and must be considered together when applying the MEO test. Accordingly, the findings of the comparative analysis provided by Ryanair cannot be accepted.

(384) Moreover, Ryanair has not shown how the airports mentioned in the study are sufficiently comparable in terms of traffic volume and type of traffic, type and level of airport services, presence of a large city in the vicinity of the airport, number of inhabitants in the catchment area, prosperity in the surrounding area, and existence of other geographical areas likely to attract passengers ([116]). What is more, neither France nor any interested third party has proposed any comparison airports with evidence that they are sufficiently comparable to Nîmes airport in terms of these various criteria.

(385) Under these circumstances, the Commission considers that the approach generally recommended in the new Guidelines for applying the MEO test to relationships between airports and airlines, namely the *ex ante* incremental profitability analysis, must be applied to the present case.

(386) This approach is justified by the fact that an airport operator may have an objective interest in concluding a transaction with an airline where it may reasonably expect this transaction to improve its profits (or reduce its losses) compared with a counterfactual situation in which this transaction is not concluded ([117]), regardless of any comparison with the conditions offered to airlines by other airport operators, or even with the conditions offered by the same airport operator to other airlines.

(387) On this last point, as the Commission noted in the new Guidelines, 'price differentiation is a standard business practice, as long as it complies with all relevant competition and sectoral legislation. Nevertheless, such differentiated pricing policies should be commercially justified to satisfy the MEO test' ([118]) (footnotes omitted).

(388) It should also be noted that France and the Operators have stated that Nîmes airport was the first regional airport operated by Veolia Transport. They consider that this position as a new entrant justified the need for VTAN to ensure Ryanair's presence and develop the airport, if necessary through an initial loss, in order to allow it to acquire the experience needed to develop its airport operation activity. If this argument were taken into account, it would mean ignoring the incremental profitability approach recommended by the guidelines and accepting that VTAN could have entered into agreements leading to negative incremental profitability, without this conduct implying any economic advantage for Ryanair.

(389) However, that argument must be rejected. Firstly, as previously indicated, neither France nor VTAN have provided any analysis showing that the 'net incremental cost' caused for Veolia Transport by the agreements signed with Ryanair/AMS, as indicated further on, would have been offset by future benefits resulting for the Veolia Transport group from this initial airport operation experience. There is also nothing to say that Veolia Transport could not have acquired this initial experience at another airport where the net cost would have been lower.

(390) Moreover, it should be noted that VTAN's conduct towards Ryanair/AMS must not be assessed in isolation, but in conjunction with the SMAN's conduct. This is all the more relevant as the 'net incremental cost' of the agreements signed with Ryanair and AMS should not actually have been borne by VTAN, but by the SMAN through the flat-rate contribution ensuring financial stability and a reasonable profit for VTAN. However, in terms of its profitability, the SMAN did not have any interest in encouraging the signature of agreements allowing the Veolia Transport group to acquire some initial airport operation experience in order to develop its activity in this area. Veolia Transport's interest in developing this activity cannot therefore lead to the conclusion that the SMAN behaved, in conjunction with VTAN, in the way that an MEO motivated by the prospect of profits would have done.

([116]) New Guidelines, point 60.
([117]) In other words, if the incremental profitability expected from this transaction is positive.
([118]) New Guidelines, point 62.

(391) It should also be noted that, in their comments on the application of the MEO test to the various agreements in question, certain interested third parties referred to the fact that the conditions offered to Ryanair may or may not have been offered to other airlines likely to want to use Nîmes airport. This argument is without merit. For an airport operator motivated by the prospect of profits, objective factors can justify different conditions being offered to different airlines. These factors may include the expected volume of traffic, the number and type of routes and associated frequencies, or even the nature of the services requested by the airline. The extent to which the conditions offered to Ryanair by the CCI and VTAN were or could have been offered to other airlines is therefore irrelevant in the context of the MEO test.

(392) In the light of all the above, the Commission considers that the approach generally recommended in the new Guidelines for applying the MEO test to relationships between airports and airlines, namely the *ex ante* incremental profitability analysis, must be applied to the present case. This approach is justified by the fact that an airport operator may have an objective interest in concluding a transaction with an airline where it may reasonably expect this transaction to improve its profits (or reduce its losses) compared with a counterfactual situation in which this transaction is not concluded ([119]), regardless of any comparison with the conditions offered to other airlines or with the conditions offered by other airport operators.

7.1.1.2.4.3. *Conclusion on the terms for applying the market economy operator test*

(393) It is clear from all the above that, in order to apply the MEO test to the agreements in question, the Commission must analyse each marketing services agreement together with the corresponding airport services agreement, and must assess whether a hypothetical MEO, motivated by the prospect of profits and operating Nîmes airport, would have signed these agreements. To this end, it is necessary to determine the incremental profitability of the agreements as it would have been assessed by the MEO at the time of their signature, by estimating, for the entire period of application of the agreements:

— the future incremental traffic expected from the implementation of these agreements, possibly taking into account the effects of the marketing services on the load factors of the routes covered by the agreements,

— the future incremental revenues expected from the implementation of these agreements, including revenues from airport charges and ground handling services, generated by the routes covered by these agreements, as well as non-aeronautical revenue from the additional traffic generated by the implementation of these agreements,

— the future incremental costs expected from the implementation of these agreements, including operating costs and any incremental investment costs generated by the routes covered by these agreements, as well as the costs of marketing services.

(394) These calculations should provide the future annual flows corresponding to the difference between incremental revenues and costs, to be discounted, if necessary, by a rate reflecting the cost of capital for the airport operator. A positive net present value indicates in principle that the agreements in question do not confer an economic advantage, whereas a negative net present value reveals the presence of such an advantage.

(395) It should be noted that, in this assessment, the arguments of Ryanair and the Operators that the price of the marketing services purchased by the Operators is equivalent to or less than what may be regarded as a 'market price' for such services are without merit. A hypothetical MEO motivated by the prospect of profits would not be prepared to purchase such services, even at a price at or below 'market price', if it were predicted that, despite the positive effect of such services on passenger traffic on the air routes concerned, the incremental costs generated by the agreements would exceed the incremental revenues at present value. In such a scenario, the 'market price' would be higher than the hypothetical MEO was prepared to pay, and the services in question would therefore logically be rejected.

([119]) In other words, if the incremental profitability expected from this transaction is positive.

(396) For the same reasons, the fact that the prices set in the airport services agreement may be equivalent to or higher than the prices invoiced by even slightly comparable airport operators would be irrelevant in this assessment if these prices were not expected to generate sufficient incremental revenues to cover the incremental costs.

7.1.1.2.5. **Application of the market economy operator test**

(397) For the purpose of assessing the agreements in question and given the above considerations, it should be noted that both the existence and the amount of aid in these agreements fall to be assessed in the light of the situation prevailing at the time they were signed ([120]) and, more specifically, in the light of the information available and developments foreseeable at that time.

(398) During the procedure, the Commission invited France to submit incremental cost, revenue and profitability estimates for the various agreements, which may have been produced prior to the signature of these agreements. The only information provided by France in response to this invitation appears in a business plan prepared by Veolia Transport in September 2006 ('the VTAN business plan'), a few months before it became the new airport operator, in order to assess the financial stability of the new public service delegation. This business plan was not linked to one or more specific agreements, but detailed the projected costs and revenues for the entire airport operation for the whole term of the new public service delegation (2007-2011).

(399) France has also provided the contents of a study conducted for VTAN by an economic adviser ('the VTAN study'), which aims to estimate, based on the VTAN business plan, the extent to which the additional traffic generated by a new agreement would influence the various cost and revenue items, except for the costs incurred by the marketing services agreements.

(400) With regard to the airport operator's revenues, it is clear from the VTAN study that, due to its very nature, the aeronautical revenue, which stems from airport charges and ground handling services, varies according to the additional traffic, just like the commercial non-aeronautical revenue (associated with the activity of shops, restaurants and car parks situated within the airport zone). On the other hand, the property-related non-aeronautical revenue (typically, fixed rents received by the Nîmes airport operator from various businesses present at the airport site) is not influenced by traffic variations and should not therefore be taken into account in an incremental analysis.

(401) As regards costs, the study indicates that certain items of expenditure, such as office and structural costs, are not influenced by traffic variations, whereas others, such as purchases, are directly linked to traffic. In terms of maintenance and repair expenditure, the study states that, with the infrastructure being used by both Ryanair and other airport users (training school, businesses located at the site, civil security), most of the corresponding costs are fixed and do not therefore vary according to the traffic ([121]). However, according to the study, a limited part of this expenditure (estimated at 8 % of the total servicing and maintenance expenditure) can be imputed to Ryanair.

(402) With regard to staff costs, the study takes account of the fact that part of these costs was independent of traffic, as only those costs associated with aircraft and passenger handling staff and part of the costs associated with administrative staff were imputable to the Ryanair traffic. The study therefore estimates that, over the entire period covered, the staff costs imputable to Ryanair accounted for [40-50] % of the total staff costs.

([120]) See, for example, judgment of 19 October 2005, *Freistaat Thüringen (Germany)* v *Commission*, T-318/00, EU:T:2005:363, paragraph 125, and judgment in *European Commission* v *Électricité de France (EDF)*, C-124/10 P, EU:C:2012:318, paragraphs 85, 104 and 105.

([121]) As a result, in the absence of one or more of the agreements covered by this investigation, the costs in question would have still been incurred in order to keep the infrastructure in working order. The Commission considers that, in the extreme scenario of Ryanair deciding to stop operating from the airport entirely, due to the commercial conditions proposed by the airport operator during the negotiation of an agreement, the airport operator would have continued operating the airport, at least for a certain amount of time, in order to continue serving its other customers (civil security, training school, businesses located at the site) and to try and find new airlines prepared to operate scheduled services. Consequently, in terms of applying the MEO test to the various agreements in question, the Commission takes the view that an MEO operating the airport in place of the CCI or VTAN would have excluded, from its assessment of the incremental costs, most of the infrastructure servicing and maintenance expenditure on the basis that, in the absence of the agreement, these costs would have still been incurred. This same logic applies to all the costs incurred in order to keep the airport in working order even in the absence of any scheduled air traffic, such as, for example, part of the management and administrative staff costs.

(403) The study also considers the taxes paid by the airport operator. It notes that property tax, which depends only on the extent of the property managed by the airport operator, is independent of traffic, whereas business tax depends in particular on turnover, and therefore on traffic, and payroll tax is directly linked to the staff costs mentioned above. Finally, the study considers that [40-50] % of the marketing study costs, funded by the airport operator and covering commercial passenger traffic, development of the airport through new routes or new activities and development of the industrial hub, were imputable to the Ryanair traffic.

(404) For each revenue and cost item in the VTAN business plan, the study therefore estimates a percentage to be applied in order to determine the part attributable to the Ryanair traffic, which therefore varies according to the traffic. Finally, the study uses the traffic forecasts contained in the VTAN business plan to determine, item by item, the projected incremental costs and revenues per passenger for the entire period.

(405) The Commission takes the view that the VTAN business plan and the VTAN study provide reliable information that can be taken into account when applying the MEO test. The facts on record actually show that the VTAN business plan was the result of a very thorough analysis, which is all the more reliable because this business plan served as the basis for determining the flat-rate contribution ensuring the financial stability of the airport's operation. Moreover, this business plan is not likely to have been biased by the present procedure, given that the Commission initiated its action on the basis of a complaint that was only received in January 2010. The examination of this business plan and associated documents has not revealed any rash or unrealistic assumptions among those used by Veolia Transport to produce this plan. The VTAN study is also based on reasonable assumptions. It has therefore been taken into account by the Commission in its analysis, as will be indicated below.

(406) Aside from the VTAN business plan, the only economic assessment provided by France is a study of the economic impact of Nîmes airport, carried out in 2006. This study focuses on the economic impact of the airport's activity, and particularly the routes operated by Ryanair from this airport, on the region's economy. It is not therefore relevant for the purpose of applying the MEO test, in relation to which only the airport's profitability is important.

(407) According to Ryanair, the lack of a business plan when agreements such as those covered by the formal investigation procedure are signed cannot be used as evidence that the MEO test is not satisfied.

(408) The Commission considers that the lack of a business plan, or more generally any profitability analysis carried out prior to the signature of an agreement, is a serious indication that the agreements signed by the CCI with Ryanair and AMS do not satisfy the MEO test, particularly as neither France nor the CCI has been able to provide, in respect of these agreements, any profitability analysis, even incomplete, that was carried out before the agreements were signed.

(409) This observation is also largely valid for VTAN, which, although it produced a solid and detailed business plan for the entire airport operation, did not subsequently carry out, according to the facts on record, any specific profitability analysis of the various agreements signed with Ryanair and AMS prior to their signature, even though it could have used the aforementioned business plan for this purpose ([122]).

(410) According to France, 'the operator in place initially made its decisions based on traffic growth prospects that allowed the launch of new services to be envisaged, not to mention a direct economic impact potentially resulting for the airport, in the light of the expected economic impact on the region' ([123]). This further suggests that the agreements with Ryanair and AMS do not satisfy the MEO test.

([122]) The business plan sets out projected costs and revenues for the airport's entire activity and provides projected results for this activity. As it covers the airport's entire activity, it does not analyse the projected profitability of specific agreements. In order to analyse the profitability of specific agreements, VTAN could have determined the projected incremental costs and revenues of these agreements based on certain information in the business plan, such as, for example, the non-aeronautical revenue indicated for the entire airport.

([123]) See footnote 85.

(411) This is also clearly indicated by the fact that, just before becoming the airport operator, Veolia Transport took the view that the Ryanair traffic was likely to erode the airport's profitability. As stated previously, the documents that Veolia Transport submitted in the invitation to tender procedure thus indicate that: 'Moreover, in the long term, the replacement of Ryanair's activity (company benefiting from particularly favourable conditions at the airport) could have been positively offset by the arrival of companies likely to accept less economically burdensome conditions for the airport operator …' ([124]); 'The transfer of the risk, above […] %, by the Delegating Authority was justified by the strategic nature for the Gard economy of the tourist traffic brought by Ryanair; in fact, as we explained in our tender, the arrival of this company (under particularly advantageous conditions) had negative economic implications for the airport's operation, but quite clearly positive implications for the local economy' ([125]); 'Ryanair typically chooses small or medium-sized airports, particularly in France, with which the company negotiates extremely advantageous material and/or financial conditions' ([126]); 'All in all, adding together the main agreement and the Airport Marketing Services agreement, the operations with Ryanair resulted in a negative turnover (between EUR […] thousand and EUR […] thousand according to the bid and traffic configurations, i.e. an average cost to the airport per outbound passenger of around EUR […] to EUR […] excluding tax per head)' ([127]).

(412) As explained further on, these various indications are confirmed by the Commission's assessment of the profitability analysis that a hypothetical MEO would have carried out.

(413) During the procedure, the Commission invited France to reconstruct the profitability analysis that an MEO would have carried out before signing the agreements with Ryanair and AMS, based on the objective information known to the Operators when these agreements were signed and on the foreseeable developments.

(414) In response to this invitation, France provided a reconstruction of the projected incremental costs and revenues associated with each agreement signed with Ryanair and AMS. With regard to the CCI operating period, this analysis is mainly based on *ex post* data, i.e. data observed after the agreements were signed. As a result, the method used by France involved calculating the average unit costs and revenues per passenger based on the airport's operating costs and revenues observed during the 2000-2006 period. In its analysis of each agreement, France multiplied these data by the projected incremental traffic for each agreement, i.e. the traffic that, on the signature of the agreement, this could be expected to generate. As this analysis is mainly based on cost and revenue data observed after the various agreements were signed, and not necessarily on information foreseeable at the time when the agreements were signed, this method cannot reflect the profitability analysis that an MEO would have carried out before deciding whether to enter into these agreements.

(415) Moreover, as regards the costs, the method used by France is in fact based on the full unit costs, i.e. all the airport's operating costs per passenger, instead of the incremental costs, i.e. the costs specifically generated by each agreement. However, the incremental costs may differ from the full unit costs and, as a general rule, are markedly lower, given the high proportion of fixed costs at an airport. The use of full unit costs is therefore a second weakness in the method proposed by France. It also clearly reduces the profitability of certain agreements, thus penalising the airlines concerned.

(416) Consequently, the Commission has carried out its own analysis by reconstructing the incremental costs and revenues of the various agreements, as an MEO would have calculated them *ex ante*, in order to apply the MEO test. The assumptions made and the results of the analysis are presented below.

7.1.1.2.5.1. *Time frame*

(417) When assessing the value in entering into an airport services agreement and/or a marketing services agreement, an MEO would have chosen the term of the agreement or agreements as the time frame of its assessment.

([124]) Annex 2014-1-1 to France's letter of 19 February 2014, p. 9.
([125]) Annex 2014-1-1 to France's letter of 19 February 2014, p. 15.
([126]) Annex 2014-1-4 b to France's letter of 19 February 2014, p. 13.
([127]) Annex 2014-1-4 b to France's reply of 19 February 2014 to the request for information of 23 December 2013, p. 16.

(418) There does not seem to be any justification for choosing a longer period. On the dates when the agreements were signed, a prudent MEO would not have relied on these agreements being renewed on their expiry, whether under the same terms or under different terms, particularly as low-cost airlines such as Ryanair were and are known to be very dynamic in terms of launching and withdrawing routes, or even increasing and reducing frequencies.

(419) Furthermore, it should be noted that, for certain agreements, the effective start date of the activities covered by the agreement was not the date of signature of the agreement. In this case, it is the effective start date that has been used as the starting point, and not the date of signature.

(420) It should also be noted that, in applying the MEO test, the fact that Ryanair did not operate certain routes throughout the entire period stipulated in certain agreements has not been taken into account as this factor was neither known nor foreseeable at the time when the agreements were signed.

(421) The Commission will now describe the assumptions used to analyse the agreements signed with Ryanair/AMS in terms of incremental traffic, costs and revenues, before presenting the results of this analysis.

7.1.1.2.5.2. *Incremental traffic and number of projected rotations*

(422) The analysis conducted by the Commission is based on the incremental traffic (i.e. the number of additional passengers) that an MEO operating Nîmes airport in place of the Operators could have predicted when the agreements were signed. With regard to the 2000 agreement for example, this involves determining the number of passengers that the Nîmes airport operator could have expected, in 2000, to use the Nîmes-London route operated by Ryanair, over the term of the agreement.

(423) The projected incremental traffic has been determined based on the number of routes and frequencies stipulated in the various airport services agreements and marketing services agreements, and on the resulting number of annual rotations.

(424) Furthermore, the Commission has taken into account the capacity of the aircraft used by Ryanair, namely, according to the agreements, the Boeing 737-200, the Boeing 737-300 and the Boeing 737-800.

(425) With regard to the agreements signed from October 2005, which included marketing services provided by AMS, the Commission has assumed a load factor of 85 % per flight, which is favourable to Ryanair because 85 % is a high load factor. This is also slightly above the average load factor for flights operated by Ryanair on its network ([128]), and equal to or above the load factor proposed by France for the various agreements in its reconstruction of the profitability analyses. However, the Commission takes the view that this high load factor can be used, even if it is a favourable assumption, in order to reflect a possible beneficial effect of the marketing services on passenger traffic on the air routes covered by the various agreements, and in the absence of other information quantifying the foreseeable impact of these services on the load factor.

(426) On the other hand, for the agreements signed before October 2005, the Commission has used lower load factors. The assumptions made in this regard are detailed below, in the analysis of each of the agreements in question. It should be noted in this respect that the April 2000 agreement and its various amendments did not provide for marketing services to be carried out by Ryanair or its subsidiaries, but rather public relations activities with a limited scope (distribution of press releases, organisation of press conferences, etc.) that were the responsibility of the CCI.

(427) Some agreements contained indications as to the number of passengers expected on the routes covered. However, as these indications were not binding, they would not necessarily have been taken into account by a prudent MEO in its profitability analysis. The Commission has therefore ignored them and used the assumption of an 85 % load factor for all the agreements signed from 2005 (which is higher than these indications).

([128]) See http://corporate.ryanair.com/investors/traffic-figures/

(428) Furthermore, some agreements contained a commitment by the airline with regard to the minimum number of passengers to be carried on the routes concerned. However, an MEO would have probably banked on a number of passengers higher than the minimum guaranteed by the airline. In fact, an MEO would have probably assumed that the airline had allowed for a safety margin between the traffic level to which it had committed and the traffic that it was reasonable to expect. The Commission has therefore decided to ignore these compulsory minima in its assessment. These minima are generally lower than the incremental traffic assumptions used by the Commission.

7.1.1.2.5.3. *Incremental revenues (agreements signed with Ryanair and AMS)*

(429) For each transaction covered by its analysis, the Commission has sought to determine the incremental revenues, i.e. the revenues generated by the transaction, as an MEO would have predicted them.

(430) Applying the 'single-till' principle, the Commission takes the view that both aeronautical and non-aeronautical revenues should be taken into account.

(431) Aeronautical revenue consists of the proceeds from the various charges to be paid by the airline to the airport operator, namely:

— the 'landing charge', which is a fixed amount per rotation,

— the 'passenger charge', which is a fixed amount per outbound passenger,

— the charge paid for ground handling services, which takes the form of an amount per rotation set in the various airport services agreements.

(432) The landing charge and passenger charge applied by the Operators are in principle regulated charges for access to the airport infrastructure, which are set for all user airlines following a process of consultation and which are published. For these various agreements, the Commission has used, as projected unit amounts of the landing charge and passenger charge, the public charges in force when the agreements were signed, taking into account the information in the agreements on the method for calculating the charges applicable to Ryanair, plus indexation of 2 % per year in so far as it was reasonable to predict that the regulated charges would increase each year in line with inflation. The system of regulated airport charges does not provide for automatic indexation, but allows operators to adapt charges over time following a consultation process. When the various agreements in question were signed, it was not therefore possible to predict with any certainty the future development of these regulated charges. Under these circumstances, the Commission takes the view that an MEO would have simply and logically assumed that the charges would increase each year in line with inflation, by using an inflation rate of 2 %, which is the target rate of the European Central Bank ('ECB') for the euro area ([129]).

(433) The charge for ground handling services is not regulated, but is negotiated bilaterally. In the various airport services agreements signed with Ryanair, this charge takes the form of a fixed amount per rotation, without any indexation, except in those cases where this charge is not stipulated. The amount resulting from each agreement has therefore been used by the Commission in its analysis.

(434) In order to calculate the proceeds from the three airport charges, which an MEO would have expected from each agreement, the Commission has used the forecasts of the number of rotations (for the landing charge and for the charge for ground handling services) and additional traffic (for the passenger charge), determined for each agreement, and has multiplied these by the unit charge, as determined above.

([129]) 'In the pursuit of price stability, the ECB aims at maintaining inflation rates below, but close to, 2 % over the medium term'. Original English.
See: http://www.ecb.europa.eu/mopo/intro/html/index.en.html

(435) For the non-aeronautical revenue, with regard to the agreements signed by VTAN, the Commission has used the approach proposed by France, which involves using the amount of the incremental non-aeronautical revenue per passenger ([130]) resulting from the aforementioned VTAN study. As explained above, this study and the associated VTAN business plan form acceptable bases for a projected profitability analysis.

(436) As regards the agreements signed by the CCI, the Commission has had to use a different approach given that, to its knowledge, no projection of the non-aeronautical revenue was made by the CCI prior to these agreements being signed. The Commission has therefore used the figures provided by France on the commercial non-aeronautical revenue for the entire airport, observed during the 1999-2006 period. The Commission takes the view that these figures offer the most reliable basis, bearing in mind that, unlike the property-related revenue, which is fixed, the commercial revenue varies according to the traffic, and in an almost proportional manner. The Commission considers it likely that an MEO could have determined an amount of incremental non-aeronautical revenue per passenger when the various agreements were signed, based on the airport's total commercial non-aeronautical revenue per passenger over a long enough period to be representative, and immediately preceding the signature of the agreement in question. The Commission has used a three-year period where the figures were available for this period ([131]). Where the figures were only available for a shorter period (for example, one year in the case of the April 2000 agreement), the Commission has accepted this shorter period. The Commission has also taken account of inflation by applying an indexation rate of 2 % ([132]).

(437) Table 5 in this recital gives the airport's total commercial non-aeronautical revenue observed during the 1999-2011 period, year by year, and, for each year, the average unit amount of non-aeronautical revenue per passenger over the previous three years, or over the previous longest period for which figures are available, if this is less than three years.

Table 5

Total commercial non-aeronautical revenue and non-aeronautical revenue per passenger

Year	Total number of passengers	Total commercial non-aeronautical revenue	Running average over the previous three years (or over a shorter period depending on the available figures)
1999	297 150	[600 000-800 000]	
2000	277 521	[400 000-600 000]	[2-4]
2001	319 378	[800 000-1 000 000]	[2-4]
2002	231 122	[600 000-800 000]	[2-4]
2003	134 444	[400 000-600 000]	[2-4]
2004	156 581	[400 000-600 000]	[2-4]
2005	206 128	[1 000 000-1 200 000]	[2-4]
2006	226 887	[400 000-600 000]	[2-4]

([130]) The VTAN study arrived at an amount of incremental non-aeronautical revenue per passenger of EUR [2-4].

([131]) An MEO would have chosen the period in question by taking account of several factors: firstly, the smoothing effect afforded by a relatively long period and, secondly, the disadvantages of a long period, such as possible changes in passenger spending preferences and methods over a long period. As a result, using the average of the non-aeronautical revenue per passenger over a single year would make the amount obtained overly dependent on the specific circumstances in that year, which justifies the choice of a longer period. A five-year period seems too long because the behaviour of passengers in terms of non-aeronautical spending may substantially change over such a period. Consequently, a three-year period seems to be a reasonable choice.

([132]) See recital 432 on the justification for this rate of 2 %.

(438) The assumptions used are favourable to Ryanair because it is clear that the amount of incremental non-aeronautical revenue per passenger resulting from this method is higher than the amount resulting from the VTAN business plan.

7.1.1.2.5.4. *Incremental costs (agreements signed with Ryanair and AMS)*

(439) The incremental costs that could be expected *ex ante* from each transaction (consisting, where applicable, of an airport services agreement and a marketing services agreement) by an MEO operating the airport in place of the Operators may fall into the following three categories:

— costs of purchasing the marketing services,

— financial incentives involving the transfer by the airport operator to Ryanair, under the airport services agreement, of part of the proceeds from the airport charges, according to criteria such as the traffic level,

— incremental investment costs, due to investments made as a result of the transaction,

— incremental operating costs, namely operating costs (staff, sundry purchases) that may be generated as a result of the transaction.

(440) With regard to the costs of the marketing services agreements and 'financial incentives', the Commission has taken into account the amounts stipulated in the various marketing services agreements and the financial incentive mechanisms provided for in the various airport services agreements.

(441) As with the traffic forecasts, the projected marketing payments do not necessarily represent the amounts actually paid, given that certain events occurring after the agreements were signed may have resulted in deviations from these initial figures. This is particularly the case where the agreement was terminated early. However, these events should not be taken into account when applying the MEO test because they postdate the signature of the agreements.

(442) As regards the incremental investment costs, none have been accepted since there is nothing in the records to suggest that an MEO would have expected to have to make certain investments due to one or more of the agreements covered by the formal investigation procedure.

(443) In the absence of a business plan for each agreement, the incremental operating costs that were foreseeable when the various agreements were signed are the most difficult category to determine. In particular, the approach used for the non-aeronautical revenue, which, for the period prior to 2007, involved using the airport's total commercial non-aeronautical revenue in order to determine the revenue per passenger, cannot be used for the operating costs.

(444) Such an approach would involve considering the airport's total operating costs, reduced to the number of passengers, as incremental costs. However, a significant proportion of an airport's operating costs is fixed, which means that the total operating costs per passenger are likely to be markedly higher, in most cases, than the incremental costs.

(445) In order to estimate the incremental operating costs, the Commission must use the airport operator's analysis, as it is unable to estimate itself how a given agreement may influence the airport's various cost items.

(446) However, the only *ex ante* estimates that the Commission can use are found in the VTAN business plan, based on which the VTAN study arrived at a total incremental operating cost per passenger of EUR [2-4]. In the absence of anything better, the Commission considers that this figure is an acceptable basis for determining the impact of additional traffic on the airport's operating costs. This figure was established based on the VTAN business plan, which, for the reasons already stated, constitutes a source of reliable *ex ante* figures, and on the VTAN study. As explained previously, the VTAN study contains a precise and plausible assessment of how the airport's various operating cost items vary according to traffic. The Commission has therefore used this figure in its assessment of the agreements signed with Ryanair and AMS.

(447) The VTAN agreements were signed between 2007 and 2010, i.e. within a relatively short period of time after the VTAN business plan was produced. The use of the aforementioned estimate of the incremental operating cost per passenger is therefore particularly indicated for these agreements.

(448) In the absence of anything better, it is also acceptable for the agreements signed by the CCI, even if the VTAN business plan was produced after those agreements. This is particularly the case with the October 2005 agreements, which were signed just a few months before the VTAN business plan was produced. The Commission considers that an MEO would not have estimated very different incremental operating costs per passenger in October 2005 and September 2006, because it is highly unlikely that the cost structure of an airport operator would alter considerably over a period of less than a year.

(449) As regards the agreements signed between 2000 and 2004, they are further away in terms of time from the VTAN business plan. However, in the absence of a better alternative, the Commission takes the view that the incremental operating cost per passenger of EUR [2-4], adjusted to take account of inflation, estimated at 2 % per year on a forecast basis, is also appropriate for analysing these older agreements.

(450) It should be noted that, for each agreement signed by the CCI, the incremental operating cost proposed by France (EUR [5-7] per passenger), calculated as the average of the operating costs per passenger observed over the 2000-2006 period, is markedly above the incremental cost per passenger used by the Commission, which the latter deems to be more relevant given the above findings.

(451) As a result, for each agreement, the incremental operating cost per passenger is multiplied by the projected incremental traffic in order to determine, year by year, the total incremental operating cost associated with the agreement.

7.1.1.2.5.4.1. Details of the various agreements

(452) The Commission will now present the results of its analysis of the various agreements, produced using the method described above. The specific features of each agreement that are relevant to this analysis will also be indicated.

7.1.1.2.5.4.1.1 Agreement of 11 April 2000

(453) This agreement concerned the operation of a daily route to London using a Boeing 737-200 configured for 130 seats. According to France, Ryanair made an oral commitment to the CCI to achieve a load factor of 70 %. The Commission takes the view that an MEO might have expected a slightly higher rate, on the reasonable assumption that Ryanair may have allowed a 'safety margin' between this oral commitment and the rate actually expected. However, as Ryanair had no previous experience of operating to Nîmes and the agreement did not provide for any marketing activities comparable to those subsequently provided by AMS, the Commission takes the view that it is not appropriate to use the load factor of 85 % accepted for the agreements signed from 2005. It has therefore opted for a load factor of 75 %. The Commission notes that this factor is more or less equivalent to the factor observed in 2000-2002.

(454) The Commission's analysis includes the incremental traffic resulting from this 75 % rate, applied to one daily route operated using an aircraft with 130 seats, and the associated incremental revenues and incremental operating costs, according to the principles set out above. Table 6 in this recital gives the results of this analysis.

Table 6

Result of reconstructing the *ex ante* profitability analysis for the agreement of 11 April 2000

2000 agreement (London) — forecasts of incremental traffic, revenues and costs											
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
total number of inbound and outbound passengers	[0-50 000]	[50 000-100 000]	[50 000-100 000]	[50 000-100 000]	[50 000-100 000]	[50 000-100 000]	[50 000-100 000]	[50 000-100 000]	[50 000-100 000]	[50 000-100 000]	[0-50 000]
number of rotations per year	[200-250]	[350-400]	[350-400]	[350-400]	[350-400]	[350-400]	[350-400]	[350-400]	[350-400]	[350-400]	[150-200]
landing charge	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
passenger charge	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
ground handling services	—	—	—	—	—	—	—	—	—	—	—
total aeronautical revenue	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
non-aeronautical revenue	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
total revenues	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
operating costs (staff, sundry purchases, etc.)	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
marketing costs	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
total costs	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
incremental flows (revenues less costs)	**[50 000-100 000]**	**[100 000-150 000]**	**[100 000-150 000]**	**[150 000-200 000]**	**[150 000-200 000]**	**[150 000-200 000]**	**[150 000-200 000]**	**[150 000-200 000]**	**[150 000-200 000]**	**[150 000-200 000]**	**[50 000-100 000]**

(455) Table 6 in the above recital shows that an MEO would have expected positive annual incremental flows each year until the 2000 agreement expired, and consequently a positive incremental profitability.

(456) Furthermore, in 2000 Air France was still operating scheduled services from Nîmes airport. According to France, the CCI was trying at that time to diversify the airport's commercial activity and, in that context, it initiated discussions with several low-cost airlines, after having also analysed the freight and charter activities. The Commission takes the view, in this context, that the signature of the agreement of 11 April 2000 can be regarded as forming part of an overall strategy of the CCI expected to lead the airport to profitability, at least in the long term ([133]).

(457) It is clear from the above that the agreement of 11 April 2000 did not confer any economic advantage on Ryanair and, consequently, does not constitute State aid in its favour.

7.1.1.2.5.4.1.2 Correspondence exchanged between the end of 2001 and the beginning of 2002

(458) The agreement of 11 April 2000 was amended by correspondence exchanged between the CCI and Ryanair, dated 28 November 2001, 11, 18, 21 and 24 December 2001, and 2, 5 and 15 February 2002 ('correspondence exchanged between the end of 2001 and the beginning of 2002').

(459) It is apparent from this correspondence and from the explanations provided by France in this respect that this correspondence constitutes a transaction that amended the agreement of 11 April 2000 by increasing the marketing payments by FRF […] (i.e. EUR […]) per outbound passenger from 1 January 2002 until the agreement expired, and by further increasing these payments by an additional amount of FRF […] (i.e. EUR […]) per outbound passenger during the period between 29 April and 31 October 2002 ('the 2002 summer season'), provided that Ryanair added an additional daily flight to its London route during this period.

(460) According to France, this second flight meant a possible 185 additional flights during the 2002 summer season, which, based on an aircraft configured for 148 passengers and a load factor of 75 % more or less corresponding to the traffic carried previously, could have led to additional traffic totalling 41 070 passengers. The assumption of a 75 % load factor seems reasonable as it corresponds to the traffic carried during the previous period and as the correspondence exchanged between the end of 2001 and the beginning of 2002 did not provide for any additional marketing activities, on the part of Ryanair or the CCI, that were likely to significantly increase traffic.

(461) This additional traffic as a result of the second daily flight during the 2002 summer season is the only incremental traffic associated with the correspondence exchanged between the end of 2001 and the beginning of 2002, since this correspondence did not amend, except for the 2002 summer season, the daily flight frequency stipulated in the agreement of 11 April 2000 for the Nîmes-London route. The Commission has therefore included this incremental traffic in its analysis, together with the associated incremental revenues and incremental operating costs, according to the principles set out above. As regards the incremental aeronautical revenue, it has taken into account the airport charges applicable in 2001. With regard to the incremental marketing costs, the Commission has included, in its analysis, the general increase of EUR […] per outbound passenger until the 2000 agreement expired, together with the additional increase stipulated for the 2002 summer season for all passengers (and not just those corresponding to the additional daily flight). Table 7 in this recital gives the results of this analysis.

([133]) New Guidelines, point 66.

Table 7

Result of reconstructing the *ex ante* profitability analysis for the correspondence exchanged between the end of 2001 and the beginning of 2002

	2002	2003	2004	2005	2006	2007	2008	2009	2010
total number of inbound and outbound passengers	[0-50 000]	—	—	—	—	—	—	—	—
number of rotations per year	[150-200]	—	—	—	—	—	—	—	—
landing charge	[…]	—	—	—	—	—	—	—	—
passenger charge	[…]	—	—	—	—	—	—	—	—
ground handling services	—	—	—	—	—	—	—	—	—
total aeronautical revenue	[…]	—	—	—	—	—	—	—	—
non-aeronautical revenue	[…]	—	—	—	—	—	—	—	—
total revenues	**[…]**	**—**	**—**	**—**	**—**	**—**	**—**	**—**	**—**
operating costs (staff, sundry purchases, etc.)	[…]	—	—	—	—	—	—	—	—
marketing costs	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
total costs	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
incremental flows (revenues less costs)	**- [0-50 000]**	**- [0-50 000]**	**- [0-50 000]**	**- [0-50 000]**	**- [0-50 000]**	**- [0-50 000]**	**- [0-50 000]**	**- [0-50 000]**	**- [0-50 000]**

(462) This table shows that an MEO would have expected negative annual incremental flows until the 2000 agreement expired, as amended by the correspondence exchanged between the end of 2001 and the beginning of 2002. Consequently, the transaction consisting of the correspondence exchanged between the end of 2001 and the beginning of 2002 conferred an economic advantage on Ryanair.

7.1.1.2.5.4.1.3 Correspondence exchanged in 2004

(463) The terms of the agreement of 11 April 2000 were amended once again, but this time for a more limited period, by the exchanges of letters and emails of 10 and 16 March 2004 ('the correspondence exchanged in 2004').

(464) It is apparent from this correspondence and from the explanations provided by France in this respect that this correspondence amended the agreement of 11 April 2000 by increasing the marketing payments by EUR […] per outbound passenger during the period from 29 April to 31 October 2004 ('the 2004 summer season'), provided that Ryanair added an additional daily flight to its London route during this period.

(465) According to France, this second flight meant a possible 185 additional flights during the 2004 summer season, which, based on an aircraft configured for 148 passengers and a load factor of 75 %, could have led to additional traffic totalling 41 070 passengers. The assumption of a 75 % load factor proposed by France seems reasonable as the correspondence exchanged in 2004 did not provide for any additional marketing activities, on the part of Ryanair or the CCI, that were likely to significantly increase traffic in relation to the traffic carried previously.

(466) This additional traffic as a result of the second daily flight during the 2004 summer season is the only incremental traffic associated with the correspondence exchanged in 2004. The Commission has therefore included this incremental traffic in its analysis, together with the associated incremental revenues and incremental operating costs, according to the principles set out above. With regard to the incremental marketing costs, the Commission has included, in its analysis, the exceptional increase stipulated for the 2004 summer season for all passengers (and not just those corresponding to the additional daily flight). Table 8 in this recital gives the results of this analysis.

Table 8

Result of reconstructing the *ex ante* profitability analysis for the correspondence exchanged in 2004

	2004
total number of inbound and outbound passengers	[0-50 000]
number of rotations per year	[150-200]
landing charge	[…]
passenger charge	[…]
ground handling services	—
total aeronautical revenue	[…]
non-aeronautical revenue	[…]
total revenues	**[…]**

	2004
operating costs (staff, sundry purchases, etc.)	[…]
marketing costs	[…]
total costs	**[…]**
incremental flows (revenues less costs)	**- [100 000-150 000]**

(467) This table shows that an MEO would have expected a negative incremental flow in 2004. Consequently, the transaction consisting of the correspondence exchanged in 2004 conferred an economic advantage on Ryanair.

7.1.1.2.5.4.1.4 2005 agreements

(468) Through the airport services agreement of 10 October 2005 and the marketing services agreement signed on the same date ('the 2005 agreements'), Ryanair undertook to operate:

— a daily route to London, to which a second daily service was to be added for six months during the 2005 summer season,

— a route to Liverpool four times a week,

— from the end of March 2006, a third route, whose launch was to be announced before the end of 2005, accounting for at least [0-50 000] outbound passengers per year,

— from the end of April 2006, a fourth route, whose launch was to be announced before the end of 2005, accounting for at least [0-50 000] outbound passengers per year.

(469) These agreements replaced the agreement of 11 April 2000, which was therefore terminated before the end of its initial term, with totally different contractual conditions being established. The preamble to the 2005 airport services agreement stated that Ryanair, after having conducted 'a prudent experimental operation' ([134]) of a daily route to London, planned to permanently establish itself at Nîmes and increase the number of routes from that airport 'provided that both technical and financial conditions proposed by FNI were acceptable, **so as to make the operation of the routes viable**' ([135]) (bold added).

(470) This passage suggests that, if the CCI had not accepted the terms of the 2005 agreements, Ryanair would have threatened to cease all its operations at Nîmes airport, on the grounds that operating the route to London was not economically viable. A prudent MEO would undoubtedly have taken this threat seriously, particularly as the April 2000 agreement did not contain any clear and irrevocable undertaking on the part of Ryanair to operate the route to London for the 10 years provided for by the agreement. As a result, a prudent MEO acting in place of the CCI would have in all likelihood considered that, if it did not sign the agreements in question, Ryanair would cease all its operations at Nîmes airport.

([134]) See footnote 92.
([135]) Original English. FNI is the IATA code for Nîmes airport.

(471) The incremental traffic associated with the 2005 agreements therefore corresponds to the traffic expected for all the routes and frequencies mentioned in these agreements. For each of these routes and for the reasons set out above, particularly in the light of the marketing services offered by Ryanair, an 85 % load factor has been used. As the frequencies of the third and fourth routes were not known at the time when the agreements were signed, the Commission has determined these from the minimum passenger numbers to which Ryanair committed in the 2005 agreements ([136]), in order to reconstruct the assumptions that would have been used by a prudent MEO.

(472) The Commission has therefore included this incremental traffic in its analysis, together with the associated incremental costs and revenues, according to the principles set out above. It has also included the cost of the financial 'incentives' provided for in Article 8 of the airport services agreement of 10 October 2005, namely a payment by the CCI to Ryanair of EUR […] per outbound passenger and EUR […] per rotation.

Table 9

Result of reconstructing the *ex ante* profitability analysis for the agreements of 10 October 2005

	2005	2006	2007	2008	2009
total number of inbound and outbound passengers	[200 000-250 000]	[250 000-300 000]	[250 000-300 000]	[300 000-350 000]	[300 000-350 000]
number of rotations per year	[750-800]	[800-850]	[850-900]	[900-950]	[900-950]
landing charge	[…]	[…]	[…]	[…]	[…]
passenger charge	[…]	[…]	[…]	[…]	[…]
ground handling services	[…]	[…]	[…]	[…]	[…]
total aeronautical revenue	[…]	[…]	[…]	[…]	[…]
non-aeronautical revenue	[…]	[…]	[…]	[…]	[…]
total revenues	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
operating costs (staff, sundry purchases, etc.)	[…]	[…]	[…]	[…]	[…]
marketing costs	[…]	[…]	[…]	[…]	[…]
financial incentives	[…]	[…]	[…]	[…]	[…]
total costs	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
incremental flows (revenues less costs)	**- [150 000-200 000]**	**- [250 000-300 000]**	**- [200 000-250 000]**	**- [100 000-150 000]**	**- [50 000-100 000]**

([136]) For the fourth route, the minimum number of passengers specified in the agreement ([0-50 000] outbound passengers) is identical to the number stipulated for the Liverpool route. A frequency identical to that of the Liverpool route (four flights a week) has therefore been used for the fourth route. As regards the third route, for which a minimum of [0-50 000] outbound passengers was specified in the agreement, the same reasoning has led to the assumption of three flights a week.

(473) This table shows that an MEO would have expected negative annual incremental flows until the 2005 agreements expired. Consequently, the transaction consisting of the 2005 agreements conferred an economic advantage on Ryanair/AMS.

7.1.1.2.5.4.1.5 Amendment of 30 January 2006

(474) It is clear from reading the amendment of 30 January 2006 and from France's explanations that this amendment simply confirmed that the 2005 agreements (which were not due to expire until the end of 2009) would remain in force until the CCI stopped operating Nîmes airport. This amendment did not therefore confer any additional advantage on Ryanair/AMS over and above that resulting from the 2005 agreements. The amendment of 30 January 2006 does not therefore constitute State aid.

7.1.1.2.5.4.1.6 Amendment of 17 October 2006

(475) It is clear from reading the amendment of 17 October 2006 and from France's explanations that this amendment reduced the volume of marketing services provided for 2006 due to the CCI being unable to supply the marketing materials to be included on the Ryanair website and due to the provision of the marketing services being suspended for nearly six months. This situation was due to the fact that the CCI was unable to supply the texts to be included on the Ryanair website. These marketing services were therefore delayed and were provided during the second half of 2006, which led to the cost of the services for 2006 being reduced.

(476) In so far as the delay in question was attributable to the CCI and as it nevertheless obtained from AMS a reduction in the marketing payments resulting from their 2005 agreement, the CCI acted on this occasion as a prudent MEO. The amendment of 17 October 2006 did not therefore confer any economic advantage on Ryanair and does not therefore constitute State aid.

7.1.1.2.5.4.1.7 Agreements of 2 January 2007

(477) The airport services agreement of 2 January 2007 and the marketing services agreement signed on the same date ('the agreements of 2 January 2007') were the first agreements to be signed between VTAN and Ryanair/AMS. In the absence of these agreements, Ryanair would have been free to cease all its operations at Nîmes. The incremental traffic associated with the agreements of 2 January 2007 therefore corresponds to the traffic expected for all the routes and frequencies mentioned in these agreements, namely for the period from 2 January to 31 October 2007:

— a daily route to London,

— a route to Liverpool four times a week,

— a route to Charleroi four times a week,

— a route to East Midlands three times a week.

(478) Using a load factor of 85 % for the reasons given previously, the Commission has included this incremental traffic in its analysis, together with the associated incremental costs and revenues, according to the principles set out above. It has also included the cost of the financial 'incentives' provided for in Article 8 of the airport services agreement of 2 January 2007, namely a payment by VTAN to Ryanair per outbound passenger, which increased in stages according to the number of passengers.

Table 10

Result of reconstructing the *ex ante* profitability analysis for the agreements of 2 January 2007

	2007
total number of inbound and outbound passengers	[250 000-300 000]
number of rotations per year	[750-800]
landing charge	[…]

	2007
passenger charge	[…]
ground handling services	[…]
total aeronautical revenue	[…]
non-aeronautical revenue	[…]
total revenues	**[…]**
operating costs (staff, sundry purchases, etc.)	[…]
marketing costs	[…]
financial incentives	[…]
total costs	**[…]**
incremental flows (revenues less costs)	**- [700 000-750 000]**

(479) Table 10 in the above recital shows that an MEO would have expected a negative incremental flow of EUR […] over the period from 2 January to 31 October 2007. Consequently, the transaction consisting of the agreements of 2 January 2007 conferred an economic advantage on Ryanair/AMS.

7.1.1.2.5.4.1.8 Amendment of 1 August 2007

(480) The amendment of 1 August 2007 to the marketing services agreement of 2 January 2007 ('the amendment of 1 August 2007') provided for the payment of an additional marketing contribution by VTAN to AMS of EUR […] for the period between 1 September 2007 and 28 February 2008. According to France, 'This amendment was a condition for the Ryanair service to Charleroi to be maintained for the 2007-2008 winter season. It was particularly important for VTAN to maintain this service as (i) Ryanair was its main operator/customer; and (ii) the Nîmes airport concession was the first to have been awarded to the Veolia group. The amount of the additional contribution of EUR […] was "imposed" by Ryanair on VTAN, which, given its status as an entrant to the market, was not in a strong position to negotiate this contribution downwards.'

(481) It is clear from these explanations that an MEO operating Nîmes airport would have expected Ryanair to stop operating its four flights a week to Charleroi during the 2007-2008 winter season if this amendment had not been made. This assumption would have been all the more plausible as the agreements of 2 January 2007 were due to expire on 31 October 2007 and VTAN therefore had no guarantee that Ryanair would continue to operate its service to Charleroi after that date.

(482) The incremental traffic associated with the amendment of 1 August 2007 therefore corresponds to the traffic on these four flights a week during the period in question, which would have been 'lost' in the counterfactual situation. Using a load factor of 85 % for the reasons given previously, the Commission has included this incremental traffic in its analysis, together with the associated incremental costs and revenues, according to the principles set out above. It has also included the cost of the financial 'incentives' provided for in Article 8 of the airport services agreement of 2 January 2007, namely a payment by VTAN to Ryanair per outbound passenger, which increased in stages according to the number of passengers.

Table 11

Result of reconstructing the *ex ante* profitability analysis for the amendment of 1 August 2007

2007-2008 winter season	
total number of inbound and outbound passengers	[0-50 000]
number of rotations per year	[100-150]
landing charge	[…]
passenger charge	[…]
ground handling services	[…]
total aeronautical revenue	[…]
non-aeronautical revenue	[…]
total revenues	**[…]**
operating costs (staff, sundry purchases, etc.)	[…]
marketing costs	[…]
financial incentives	[…]
total costs	**[…]**
incremental flows (revenues less costs)	**- [150 000-200 000]**

(483) Table 11 in the above recital shows that an MEO would have expected a negative incremental flow of EUR - [150 000-200 000] over the 2007-2008 winter season. Consequently, the amendment of 1 August 2007 conferred an economic advantage on Ryanair/AMS.

7.1.1.2.5.4.1.9 Agreements of 1 November 2007

(484) The airport services agreement and the marketing services agreement signed for one year on 1 November 2007 ('the agreements of 1 November 2007') replaced the agreements of 2 January 2007 that were due to expire. In the absence of these agreements, Ryanair could have ceased all its operations at Nîmes. As a result, the incremental traffic associated with these agreements corresponds to all the routes and frequencies mentioned in these agreements, namely:

— a daily route to London during the summer season and four times a week during the winter season,

— a route to Liverpool four times a week during the summer season and twice a week during the winter season,

— a route to Charleroi four times a week throughout the year ([137]),

— a route to East Midlands twice a week during the summer season.

(485) Using a load factor of 85 % for the reasons given previously, the Commission has included this incremental traffic in its analysis, together with the associated incremental costs and revenues, according to the principles set out above. It has also included the cost of the aforementioned financial 'incentives' provided for in Article 8 of the airport services agreement of 1 November 2007, namely a payment by VTAN to Ryanair per outbound passenger, which increased in stages according to the number of passengers.

Table 12

Result of reconstructing the *ex ante* profitability analysis for the agreements of 1 November 2007

	winter 2007-2008	summer 2008
total number of inbound and outbound passengers	[50 000-100 000]	[100 000-150 000]
number of rotations per year	[250-300]	[400-450]
landing charge	[…]	[…]
passenger charge	[…]	[…]
ground handling services	[…]	[…]
total aeronautical revenue	[…]	[…]
non-aeronautical revenue	[…]	[…]
total revenues	**[…]**	**[…]**
operating costs (staff, sundry purchases, etc.)	[…]	[…]
marketing costs	[…]	[…]
financial incentives	[…]	[…]
total costs	**[…]**	**[…]**
incremental flows (revenues less costs)	**- [700 000-750 000]**	**- [800 000-850 000]**

([137]) With regard to the Charleroi route, it should be noted that, although, under the amendment of 1 August 2007, VTAN agreed to additional marketing payments of EUR […] in return for the continued operation of this route during the 2007-2008 winter season, it seems from the facts on record that Ryanair did not formally undertake to VTAN to continue operating the route in August 2007. Accordingly, in November 2007, Ryanair was free to stop operating this route.

(486) Table 12 in the above recital shows that an MEO would have expected negative incremental flows. Consequently, the agreements of 1 November 2007 conferred an economic advantage on Ryanair/AMS.

7.1.1.2.5.4.1.10 Agreements of 27 August 2008

(487) The airport services agreement and the marketing services agreement signed for one year on 27 August 2008 and applicable from 1 November 2008 ('the agreements of 27 August 2008') replaced the agreements of 1 November 2007 that were due to expire. In the absence of these agreements, Ryanair could have ceased all its operations at Nîmes. As a result, the incremental traffic associated with these agreements corresponds to all the routes and frequencies mentioned in these agreements, namely:

— a daily route to London during the summer season and four times a week during the winter season,

— a route to Charleroi four times a week throughout the year.

(488) Using a load factor of 85 % for the reasons given previously, the Commission has included this incremental traffic in its analysis, together with the associated incremental costs and revenues, according to the principles set out above. It has also included the cost of the financial 'incentives' provided for in Article 8 of the airport services agreement of 27 August 2008, namely a payment by VTAN to Ryanair per outbound passenger, which increased in stages according to the number of passengers.

Table 13

Result of reconstructing the *ex ante* profitability analysis for the agreements of 27 August 2008

	winter 2008-2009	summer 2009
total number of inbound and outbound passengers	[50 000-100 000]	[50 000-100 000]
number of rotations per year	[200-250]	[250-300]
landing charge	[…]	[…]
passenger charge	[…]	[…]
ground handling services	[…]	[…]
total aeronautical revenue	[…]	[…]
non-aeronautical revenue	[…]	[…]
total revenues	**[…]**	**[…]**

	winter 2008-2009	summer 2009
operating costs (staff, sundry purchases, etc.)	[…]	[…]
marketing costs	[…]	[…]
financial incentives	[…]	[…]
total costs	**[…]**	**[…]**
incremental flows (revenues less costs)	**- [450 000-500 000]**	**- [500 000-550 000]**

(489) Table 13 in the above recital shows that an MEO would have expected negative incremental flows. Consequently, the agreements of 27 August 2008 conferred an economic advantage on Ryanair/AMS.

7.1.1.2.5.4.1.11 Agreements of 25 August 2009

(490) On 25 August 2009 VTAN signed two agreements ('the agreements of 25 August 2009') with Ryanair and AMS, in the form of amendments extending until 31 December 2011 the application of the agreements of 27 August 2008, which were due to expire on 1 November 2009. In the absence of the agreements of 25 August 2009, Ryanair could have ceased all its operations at Nîmes. As a result, the incremental traffic associated with these agreements corresponds to all the routes and frequencies mentioned in the agreements of 27 August 2008.

(491) Using a load factor of 85 % for the reasons given previously, the Commission has included this incremental traffic in its analysis, together with the associated incremental costs and revenues, according to the principles set out above. It has also included the cost of the aforementioned financial 'incentives' provided for in Article 8 of the airport services agreement of 27 August 2008.

Table 14

Result of reconstructing the *ex ante* profitability analysis for the agreements of 25 August 2009

	winter 2009-2010	summer 2010	winter 2010-2011	summer 2011	winter 2011-2012 (up to 31.12.2011)
total number of inbound and outbound passengers	[50 000-100 000]	[50 000-100 000]	[50 000-100 000]	[50 000-100 000]	[0-50 000]
number of rotations per year	[200-250]	[250-300]	[200-250]	[250-300]	[50-100]
landing charge	[…]	[…]	[…]	[…]	[…]
passenger charge	[…]	[…]	[…]	[…]	[…]
ground handling services	[…]	[…]	[…]	[…]	[…]
total aeronautical revenue	[…]	[…]	[…]	[…]	[…]
non-aeronautical revenue	[…]	[…]	[…]	[…]	[…]
total revenues	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**

	winter 2009-2010	summer 2010	winter 2010-2011	summer 2011	winter 2011-2012 (up to 31.12.2011)
operating costs (staff, sundry purchases, etc.)	[…]	[…]	[…]	[…]	[…]
marketing costs	[…]	[…]	[…]	[…]	[…]
financial incentives	[…]	[…]	[…]	[…]	[…]
total costs	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
incremental flows (revenues less costs)	**- [450 000-500 000]**	**- [500 000-550 000]**	**- [450 000-500 000]**	**- [450 000-500 000]**	**- [150 000-200 000]**

(492) Table 14 in the above recital shows that an MEO would have expected negative incremental flows. Consequently, the agreements of 25 August 2009 conferred an economic advantage on Ryanair/AMS.

7.1.1.2.5.4.1.12 Amendment of 18 August 2010

(493) The amendment of 18 August 2010 to the marketing services agreement of 27 August 2008 ('the amendment of 18 August 2010') provided for an exceptional increase of EUR [20 000-50 000] in the marketing payments made by VTAN under the terms of the marketing services agreement of 27 August 2008, extended by the amendment of 25 August 2009. This increase was not a condition for any undertaking by Ryanair in terms of opening new routes, increasing frequencies, not closing routes or not reducing frequencies.

(494) According to France, 'the amendment of 18 August 2010 made limited changes (additional payment for exceptional marketing services) involving a very small amount, which were not such as to alter the routes and frequencies stipulated in the initial agreement (agreement of 27 August 2008) or the expected traffic … Its signature must be viewed in the context of maintaining good commercial relations between the airport operator and Ryanair, which were very important for VTAN as (i) Ryanair was its main operator/customer; and (ii) the Nîmes airport concession was the first to have been awarded to the Veolia group. The amendment can therefore be likened to a gesture of goodwill that did not alter the general balance of the concession.'

(495) The exceptional marketing services provided for in this amendment were not such as to increase traffic on the routes in question. France has not in fact made this argument, but simply describes this amendment as a 'gesture of goodwill' on the part of VTAN. The increase in the marketing payments therefore represented a net incremental cost for VTAN, without any incremental revenue being expected in return. It therefore represents a negative net incremental flow of - EUR [50 000] for the year 2010. Consequently, the amendment of 18 August 2010 conferred an economic advantage on Ryanair/AMS.

Table 15

Result of reconstructing the *ex ante* profitability analysis for the amendment of 18 August 2010

	2010	2011
total number of inbound and outbound passengers		
number of rotations per year		
landing charge		
passenger charge		
ground handling services		
total aeronautical revenue		
non-aeronautical revenue		
other (financial income)		
total revenues	—	—
operating costs (staff, sundry purchases, etc.)		
marketing costs	[0-50 000]	
financial incentives		
total costs	**[0-50 000]**	**—**
incremental flows (revenues less costs)	**- [0-50 000]**	—

7.1.1.2.5.4.1.13 Amendment of 30 November 2010

(496) The amendment of 30 November 2010 to the marketing services agreement of 27 August 2008 ('the amendment of 30 November 2010') provided for an exceptional increase of EUR 50 000 in the marketing payments made by VTAN under the terms of the marketing services agreement of 27 August 2008, extended by the amendment of 25 August 2009. On reading the amendment of 30 November 2010, the email exchanges between Ryanair and VTAN that gave rise to this amendment, and the explanations provided by France, it appears that Ryanair made the operation of three weekly services instead of two on the Nîmes-Liverpool route during the 2011 summer season conditional upon the additional marketing payment of EUR [35 000-65 000]. An email from a Ryanair representative to a VTAN representative dated 29 November 2010 indicates in particular: 'Yes the […] frequencies will be there for […] and in return you will give us the […]' ([138]).

(497) The incremental traffic associated with the amendment of 30 November 2010 therefore corresponds to one weekly service only. Using a load factor of 85 % for the reasons given previously, the Commission has included this incremental traffic in its analysis, together with the associated incremental costs and revenues, according to the principles set out above.

([138]) See footnote 92.

Table 16

Result of reconstructing the *ex ante* profitability analysis for the amendment of 30 November 2010

	summer 2011
total number of inbound and outbound passengers	[0-50 000]
number of rotations	[0-50]
landing charge	[…]
passenger charge	[…]
ground handling services	[…]
total aeronautical revenue	[…]
non-aeronautical revenue	[…]
total revenues	**[…]**
operating costs (staff, sundry purchases, etc.)	[…]
marketing costs	[…]
total costs	**[…]**
incremental flows (revenues less costs)	**- [0-50 000]**

(498) Table 16 in the above recital shows that an MEO would have expected a negative incremental flow of EUR - [0-50 000]. Consequently, the amendment of 30 November 2010 conferred an economic advantage on Ryanair/AMS.

7.1.1.3. ***Distortions of competition and effect on trade between Member States***

(499) When financial aid granted by a Member State strengthens the position of undertakings compared with other undertakings competing in intra-Community trade, that trade must be regarded as affected by that aid. In accordance with settled case-law ([139]), for a measure to distort competition it is sufficient that the recipient of the aid competes with other undertakings in markets open to competition.

(500) Since the entry into force of the third air transport liberalisation package on 1 January 1993 ([140]), nothing prevents EU air carriers from operating flights on routes within the EU and benefiting from unlimited cabotage authorisation.

([139]) Judgment of 30 April 1998, *Het Vlaamse Gewest (Flemish Region)* v *Commission*, T-214/95, EU:T:1998:77.
([140]) Council Regulations (EEC) No 2407/92 (OJ L 240, 24.8.1992, p. 1), (EEC) No 2408/92 (OJ L 240, 24.8.1992, p. 8) and (EEC) No 2409/92 (OJ L 240, 24.8.1992, p. 15).

(501) The advantages received by Ryanair/AMS through the various agreements covered by this investigation, for which the existence of such an advantage has been established above, have therefore strengthened their position with regard to all other EU air carriers that are actually competing or may compete with Ryanair for the routes that they operate. As a result, they have distorted or threatened to distort competition and have affected intra-Community trade.

7.1.1.4. *Conclusion on the existence of State aid in favour of Ryanair/AMS*

(502) The following agreements meet the cumulative conditions set out in Article 107(1) TFEU and constitute State aid in favour of Ryanair/AMS:

— the correspondence exchanged between the end of 2001 and the beginning of 2002 and in March 2004, which substantially amended the contents of the agreement signed by the CCI with Ryanair on 11 April 2000,

— the airport services and marketing services agreements of 10 October 2005 signed by the CCI with Ryanair/AMS,

— the airport services and marketing services agreements of 2 January 2007 signed by VTAN with Ryanair/AMS,

— the amendment of 1 August 2007 to the marketing services agreement of 2 January 2007,

— the airport services and marketing services agreements of 1 November 2007 signed by VTAN with Ryanair/AMS,

— the airport services and marketing services agreements of 27 August 2008 signed by VTAN with Ryanair/AMS,

— the amendments to the agreements of 27 August 2008, dated 25 August 2009, 18 August 2010 and 30 November 2010.

(503) The other agreements covered by this investigation do not constitute State aid.

7.1.2. UNLAWFUL NATURE OF THE STATE AID

(504) As the State aid identified above was implemented without having been authorised by the Commission, it constitutes unlawful aid.

7.1.3. COMPATIBILITY WITH THE INTERNAL MARKET

(505) The aid in question constitutes operating aid. Such aid can be declared compatible only under exceptional and duly justified circumstances.

(506) Moreover, it is settled case-law ([141]) that France should have indicated on what legal basis the aid in question could have been regarded as compatible with the internal market and should have proven that the conditions of compatibility were met. The Commission therefore invited France, in the opening decision and in a request for further information, to indicate the potential legal bases for compatibility and to establish whether the applicable conditions of compatibility were met, particularly if the aid in question were to be regarded as start-up aid for the launch of new routes. However, France has never argued that the measures in question constituted start-up aid compatible with the internal market, and has never proposed any other bases for their possible compatibility or any grounds allowing this aid to be declared compatible with the internal market. In addition, no interested third party has attempted to prove that these measures are compatible with the internal market.

(507) Nevertheless, the Commission considers it useful to assess to what extent this aid could be declared compatible in terms of its possible contribution to the launch of new routes or new frequencies. However, it should be stressed that this assessment is superfluous given that, in the absence of evidence provided by the Member State or interested third parties that proves the compatibility of the aid, this should be declared incompatible.

([141]) See judgment in *Italy* v *Commission*, C-364/90, EU:C:1993:157, paragraph 20.

(508) The new Guidelines state as follows with regard to such aid: 'As regards start-up aid to airlines, the Commission will apply the principles set out in these guidelines to all notified start-up aid measures in respect of which it is called upon to take a decision from 4 April 2014, even where the measures were notified prior to that date. In accordance with the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid, the Commission will apply to unlawful start-up aid to airlines the rules in force at the time when the aid was granted. Accordingly, it will not apply the principles set out in these guidelines in the case of unlawful start-up aid to airlines granted before 4 April 2014' ([142]).

(509) The 2005 Guidelines stipulate that 'The Commission will assess the compatibility of all aid to finance airport infrastructure, or start-up aid granted without its authorisation and which therefore infringes Article 88(3) of the Treaty, on the basis of these guidelines if payment of the aid started after the guidelines were published in the *Official Journal of the European Union*. In other cases, the Commission will carry out an assessment based on the rules applicable when the aid started to be paid' ([143]).

(510) The Commission points out that the aid in question was partly granted to encourage the launch of new air routes, increase the frequency on existing routes or maintain routes that might otherwise have been withdrawn. It is therefore operating aid, which aims to promote outbound air traffic from a regional airport. In this respect, it should be pointed out that operating aid is rarely likely to be declared compatible with the internal market as it usually distorts conditions of competition in the sectors in which it is granted.

7.1.3.1. ***Measures predating the entry into force of the 2005 Guidelines***

(511) Some of the measures in question were granted before the 2005 Guidelines were published on 9 December 2005 ([144]). With regard to the compatibility of aid granted before this date, point 85 of the 2005 Guidelines and point 173 of the new Guidelines refer to the rules applicable at the time when the aid was granted.

(512) Before the 2005 Guidelines were adopted, the Commission had adopted the 1994 Guidelines ([145]). However, these guidelines did not specifically deal with the issue of operating aid aimed at promoting outbound air traffic from regional airports. This issue in fact gradually appeared as a result of a build-up of congestion at certain large European airports and the development of low-cost operators, which did not yet exist in 1994. Consequently, the Commission takes the view that the 1994 Guidelines also cannot be applied to this case. The Commission must therefore in principle assess the compatibility of the aid in question directly on the basis of Article 107(3)(c) TFEU.

(513) In this respect, it should be noted that the Commission's assessment of this type of State aid has been refined over time, although some points have remained unchanged. These points stem from the general principles governing the compatibility of aid in accordance with the aforementioned provision of the Treaty.

(514) Accordingly, in the decision on Manchester airport of June 1999 ([146]), the Commission found that reductions in airport charges granted in a non-discriminatory and time-limited manner as measures aimed at promoting new routes were compatible with the rules on State aid.

([142]) New Guidelines, point 174.
([143]) Point 85 of the 2005 Guidelines.
([144]) See Section 3.2.2.1.
([145]) Community guidelines on the application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aids in the aviation sector (OJ C 350, 10.12.1994, p. 5).
([146]) Decision on State aid NN 109/98 — *United Kingdom (Manchester Airport)*.

(515) Subsequently, in its decision of February 2004 on Charleroi airport ([147]), the Commission explained that 'Operational aid measures intended to help the launch of new airlines or strengthen certain frequencies may be a necessary tool for the development of small regional airports. The measures may indeed persuade the interested companies to take the risk of investing in new routes. However, in order to declare such aid compatible on the basis of Article 87(3)(c) of the Treaty, it should be determined whether this aid is necessary and in proportion to the objective sought, and whether it affects trade to an extent that is contrary to the common interest' ([148]). The Commission therefore identified certain conditions to be met in order for this operating aid to be declared compatible, in particular the following:

— The aid must contribute to the objective of Community interest of developing a regional airport through a net increase in traffic on new routes ([149]).

— The aid must be necessary in the sense that it is not granted for a route already operated by the same or another airline or a similar route ([150]).

— The aid must have an incentive effect in the sense that it must help to develop an activity that, after a certain period, is likely to become profitable, which implies that the aid is limited in time ([151]).

— The aid must be proportional, i.e. the amount must be linked to the net development of traffic ([152]).

— The aid must have been granted transparently and without discrimination and must not be combined with other types of aid.

(516) The 2005 Guidelines and the new Guidelines precisely define these compatibility principles, but it remains the case that operating aid granted to airlines may be declared compatible by the Commission where it contributes to the development of smaller airports through a net increase in traffic on new routes, where the aid is necessary in the sense that it is not granted for a route already operated by the same or another airline or a similar route ([153]), where it is limited in time and where the route for which the aid is granted is likely to become profitable ([154]), where the amount is linked to the net development of traffic and where the aid is granted transparently and without discrimination, and where it is not combined with any other type of aid ([155]).

(517) Furthermore, in paragraph 301 of the opening decision, the Commission indicated that it proposed to examine the compatibility of this aid in the light of Article 107(3)(c) TFEU, with neither France nor any interested third party having objected to this approach.

(518) In conclusion, the Commission takes the view that, in this case, the compatibility of the following measures should be assessed in the light of the aforementioned general principles:

— the correspondence exchanged between the end of 2001 and the beginning of 2002 and in March 2004, which substantially amended the contents of the agreement signed by the CCI with Ryanair on 11 April 2000,

— the airport services and marketing services agreements of 10 October 2005 signed by the CCI with Ryanair/AMS ([156]).

([147]) Decision 2004/393/EC. This decision was annulled by the judgment in Case T-196/04 *Ryanair Ltd* v *Commission of the European Communities* ('Charleroi' judgment), EU:T:2008:585. However, it shows how the Commission's assessment of the aid in question has developed.
([148]) Charleroi decision, paragraph 279.
([149]) See recitals 283 to 297.
([150]) See recitals 288 to 309.
([151]) See recitals 311 to 317.
([152]) See recitals 318 to 325.
([153]) See points 71 to 75 and 79(b) and (c) of the 2005 Guidelines, and points 139, 140, 141 and 151 of the new Guidelines.
([154]) See point 79(b), (d) and (i) of the 2005 Guidelines, and point 147 of the new Guidelines.
([155]) See points 79(g) and (h) and 80 of the 2005 Guidelines, and points 150, 152 and 153 of the new Guidelines.
([156]) These agreements provided for retroactive application from 1 January 2005.

(519) The Commission will therefore assess the compatibility of these measures in the light of the aforementioned conditions.

(520) Contribution to the development of smaller airports through a net increase in traffic on new route. As explained previously, the correspondence exchanged between the end of 2001 and the beginning of 2002, on the one hand, and the correspondence exchanged in 2004, on the other hand, concerned the limited operation of one additional flight to London during a summer season. This correspondence therefore resulted in an increase in traffic from Nîmes airport.

(521) The airport services agreement and the marketing services agreement signed respectively with Ryanair and AMS on 10 October 2005, which entered into force on 1 January 2005, concerned the launch of three new routes, as well as the continued operation of the existing route to London. These agreements therefore contributed to a net increase in traffic from Nîmes airport, while also having the objective of contributing to the continued operation of the existing route to London.

(522) The measures are not granted for a route already operated by the same or another airline or a similar route. The correspondence exchanged between the end of 2001 and the beginning of 2002 and the correspondence exchanged in 2004 concerned a route that was already being operated, namely London-Nîmes. However, this correspondence specifically aimed to allow the launch of a second flight on this same route. The 2005 agreements did not just concern the launch of new routes, but the continued operation of the existing route to London. They do not therefore meet the condition that the measure must not be granted for a route that is already operated or a similar route.

(523) The measures are limited in time and concern routes likely to become profitable. The correspondence exchanged between the end of 2001 and the beginning of 2002, on the one hand, and the correspondence exchanged in 2004, on the other hand, aimed to allow the limited operation of a second flight to London, respectively during the 2002 summer season and during the 2004 summer season. The facts on record do not suggest that the operation of a second daily flight to London during a summer season was, between the end of 2001 and the beginning of 2002 or in 2004, likely to become profitable without aid. In fact it appears that the aid in question was granted so that this second flight could be operated on a limited basis for a single season, and not with a view to its operation continuing during subsequent summer seasons. Neither the correspondence exchanged between the end of 2001 and the beginning of 2002 nor the correspondence exchanged in 2004 therefore meets the condition that the aid must be granted for routes likely to become profitable.

(524) In addition, the Commission notes that, despite its invitation in this respect, France has not provided any viability study for the various routes and frequencies covered by the correspondence exchanged between the end of 2001 and the beginning of 2002, the correspondence exchanged in 2004 and the 2005 agreements, which Ryanair submitted with a view to proving that the aid in question was justified. Accordingly, based on the facts on record, it seems that, for the authorities that granted the aid in question, there was no clear prospect of these routes and frequencies becoming viable without aid in the more or less short term. It should also be noted that the 2005 agreements concerned a number of different routes, some of which were not even identified at the time when the agreements were signed, which confirms that the authorities concerned did not have any information likely to reassure them that these routes and frequencies were viable. The Commission further stresses that the studies submitted by the French authorities on the economic impact of the air routes operated by Ryanair analyse the characteristics of Ryanair customers and the impact that they may have on the region's development, but do not include projections of the future viability of these routes or other routes likely to be operated by Ryanair in the future. On the contrary, an analysis of the agreements signed with Ryanair proves that the aid granted to the latter for these routes was set to increase over time, even after the agreements signed between 2001 and 2005 were terminated, precisely to ensure that these routes were profitable enough for Ryanair to continue operating them.

(525) Given the above, the Commission concludes that the correspondence exchanged between the end of 2001 and the beginning of 2002, the correspondence exchanged in 2004 and the 2005 agreements do not meet the condition that the measures must be limited in time and involve routes likely to become profitable.

(526) The amount of the measures must be linked to the net development of traffic. The aid amounts resulting from the correspondence exchanged between the end of 2001 and the beginning of 2002 are linked to the development of traffic as these measures aimed to allow the operation of a second daily flight to London. However, this is not the case with the 2005 agreements, which concerned both the launch of new routes and the continued operation of the existing route to London.

(527) The aid must have been granted transparently and without discrimination and must not be combined with other types of aid. According to France, when questioned by the Commission on the meeting of this condition, the CCI wanted to stress that it made considerable efforts to attract airlines other than Ryanair under the same conditions. In 1997 the CCI apparently started to look for airlines to mitigate the loss of traffic caused by the arrival of the TGV high-speed rail service. According to the CCI, scheduled airlines were not interested and it was therefore forced to negotiate with low-cost airlines.

(528) According to France, the CCI stresses that its first contacts with Ryanair were made in 1997, which resulted in an initial route — Nîmes-London Stansted — being launched in June 2000. After the TGV's arrival in Nîmes in mid-2001, and after the withdrawal of the Paris-Nîmes route operated by Air France, the CCI apparently sought to continue this route and made contact with Air Littoral, which took over the service until July 2003.

(529) In 2001 and the following years, the CCI also met with the airlines easyJet, Buzz, Volare, My Travel and FlyBe but, despite the encouraging presence of Ryanair at the airport, none of these airlines ultimately wanted to establish an operation there. According to France, the CCI stresses that discussions were conducted on the same bases as those with Ryanair and that these conditions were offered to all airlines likely to be interested.

(530) It is clear from these explanations and from the other facts on record that the aid resulting from the correspondence exchanged between the end of 2001 and the beginning of 2002, the correspondence exchanged in 2004 and the 2005 agreements was negotiated bilaterally, without any transparency, and without a process guaranteeing the absence of discrimination, such as a public invitation to tender. This aid does not therefore meet the condition of transparency and non-discrimination.

(531) In the light of the above, the Commission considers that the State aid resulting from the correspondence of February 2002 and March 2004, which substantially amended the contents of the agreement signed by the CCI with Ryanair on 11 April 2000, and from the airport services and marketing services agreements of 10 October 2005 signed by the CCI with Ryanair/AMS is incompatible with the internal market.

7.1.3.2. ***Measures postdating the entry into force of the 2005 Guidelines***

(532) Ryanair considers that the 2005 Guidelines do not provide a reliable reference framework for assessing the State aid allegedly granted to Ryanair ([157]). However, as these guidelines provide the reference framework that was applied from their entry into force until the adoption of the new Guidelines, the Commission takes the view that this framework should in fact be applied to the measures in question. The Commission is bound to observe the guidelines that it adopts, even if these are contrary to the Treaty, which neither France nor Ryanair has maintained or proven.

(533) The 2005 Guidelines stipulate that operating aid granted to airlines (such as start-up aid for new routes) can be declared compatible with the internal market only under exceptional circumstances and under strict conditions in underprivileged regions of Europe, i.e. regions covered by the derogation set out in Article 107(3)(a) TFEU, the most remote regions and sparsely populated areas ([158]). As Nîmes airport is not situated in this type of region, this derogation does not apply.

(534) Nîmes airport is a Category D airport (small regional airport) according to the 2005 Guidelines ([159]). Small airports often do not have the passenger volumes necessary for them to reach critical mass and the break-even point. Consequently, the Commission notes that airlines are not always prepared, without appropriate incentives, to run the risk of opening routes from unknown and untested airports.

([157]) Ryanair's comments on the opening decision.
([158]) 2005 Guidelines, point 27.
([159]) 2005 Guidelines, point 15.

(535) This is why, under the 2005 Guidelines, the Commission can accept that public aid be paid temporarily to airlines under certain conditions, if this provides them with the necessary incentive to create new routes or new schedules from regional airports and to attract the passenger numbers which will enable them to break even within a limited period. The Commission will ensure that such aid does not give any advantage to large airports already largely open to international traffic and competition ([160]).

(536) The specific compatibility criteria are set out in point 79 of the 2005 Guidelines.

(537) The Commission takes the view that the compatibility of the following State aid should be assessed in the light of the 2005 Guidelines:

— the airport services and marketing services agreements of 2 January 2007 signed by VTAN with Ryanair/AMS,

— the amendments of 1 August 2007 to the agreements of 2 January 2007,

— the airport services and marketing services agreements of 1 November 2007 signed by VTAN with Ryanair/AMS,

— the airport services and marketing services agreements of 27 August 2008 signed by VTAN with Ryanair/AMS,

— the amendments of 25 August 2009, 18 August 2010 and 30 November 2010 to the agreements of 27 August 2008.

(538) The Commission does not consider that the measures granted can be declared compatible with the Treaty. In fact, the Commission takes the view that several compatibility criteria are not met, in particular:

(539) Long-term viability and degressiveness (criterion (d)), absence of a business plan (criterion (i)) and intensity and duration of the measure (criterion (f)) ([161]). None of the measures in question was structured to guarantee a degressive aid amount limited to a certain percentage of the eligible costs, which are not mentioned in the agreements in question or, to the Commission's knowledge, in any other document that VTAN or the SMAN may have had at the time when the agreements were signed. The degressiveness and maximum intensity criterion is not therefore met by any of the measures.

(540) In addition, France has indicated that Ryanair did not provide VTAN with a 'business plan proving the viability of the route for a substantial period after the expiry of the financial incentives/marketing payments' ([162]). Given this fact, and in the absence of any other information supporting the opposite view, the Commission concludes that the aid in question was not granted for routes likely to become viable without aid. Furthermore, the succession of aid measures for the routes to London (from the end of 2001 to the beginning of 2002), Liverpool (from 2005), Charleroi and East Midlands (from 2006) suggests that Ryanair would not have operated these routes if they had stopped being subsidised.

(541) Given the above, the Commission concludes that the aforementioned criteria are not met by any of the measures in question.

(542) Link with new routes or additional rotations (frequencies) on existing routes (criterion (c)). The Commission notes that the agreements in question were not signed solely with a view to opening new routes or additional frequencies.

(543) Accordingly, the agreements of 2 January 2007 did not provide for the opening of new routes or new frequencies on existing routes over and above those provided for by the 2005 agreements.

(544) As regards the amendment of 1 August 2007, France has confirmed that this was a condition for the Ryanair service to Charleroi to be maintained for the 2007-2008 winter season. It was not therefore linked with the opening of a new route or new frequencies.

([160]) 2005 Guidelines, points 71 and 74.

([161]) Degressive aid may be granted for a maximum period of three years. The amount of aid in any one year may not exceed 50 % of total eligible costs for that year and total aid may not exceed an average of 30 % of eligible costs.

([162]) Letter from France of 25 April 2014, paragraph 103.

(545) The agreements of 1 November 2007 also did not provide for the opening of new routes, but rather frequencies that were equal to or less than those provided for in the agreements of 2 January 2007, depending on the season, except for the route to London, for which an additional daily flight was introduced for the summer season. Likewise, the agreements of 27 August 2008 concerned only two routes out of the four covered by the previous agreements (London and Charleroi), with identical frequencies to those provided for in the agreements of 1 November 2007. The 2009 amendments, which simply extended those agreements, also did not provide for the opening of new routes or additional frequencies.

(546) As regards amendment No 1 of 18 August 2010, France has confirmed that the very small amount of the service was not such as to alter the routes and frequencies stipulated in the initial agreement or the expected traffic. According to France, this amendment was signed in order to maintain good commercial relations between the airport operator and Ryanair, and can be likened to a gesture of goodwill that did not alter the general balance of the concession ([163]).

(547) As regards amendment No 2 of 30 November 2010, France has confirmed that this amendment was agreed 'due to pressure being exerted by Ryanair on VTAN with regard to the Liverpool route' ([164]). France has provided emails of 23 and 29 November 2010, exchanged between Ryanair and VTAN, which prove that Ryanair was threatening to withdraw two flights from this route (reducing the number of flights from four to two) and was making the continued operation of these flights for summer 2011 (period from March 2011 to October 2011) conditional upon the purchase of additional marketing services to help promote this route, in an amount of EUR [35 000-65 000]. In the absence of this exceptional increase in the contribution, Ryanair might have ceased operating the route to Liverpool. This amendment was not therefore linked with the opening of new routes or additional frequencies, but only with saving an existing route.

(548) As a result, none of the measures in question was granted with a view to opening new routes or additional frequencies on existing routes.

(549) Compensation for additional start-up costs (criterion (e)) ([165]). The Commission considers that, for each of the measures in question, this criterion was not met. The amounts paid by the Operators were not intended to represent a portion of the additional start-up costs, for which, to the Commission's knowledge, estimates were never produced by Ryanair/AMS and provided to the Operators. This also shows that the condition relating to the maximum aid intensity was not met.

(550) Link with the development of the route (criterion (g)) ([166]). The 'incentive scheme' provided for in the agreements signed with Ryanair from 10 October 2005 onwards was not linked to the development of routes, but to the traffic levels achieved by Ryanair in terms of the number of passengers. For example, the airport services agreement of 1 January 2007 concerned four routes from Nîmes airport, namely London, Liverpool, Charleroi and East Midlands. However, the incentive scheme provided for discounts to be granted according to the number of outbound passengers ([167]), without the passenger's actual destination being specified ([168]). The same analysis of this point can be made for the other agreements. More generally, as explained above, none of the agreements in question was signed exclusively with a view to opening new routes or new frequencies. The resulting aid amounts are not therefore linked with the development of certain routes. Accordingly, the Commission considers that this criterion is not met by any of the measures in question.

(551) Non-discriminatory allocation (criterion (h)). According to France, 'VTAN states that its intention to grant financial incentives and/or make marketing payments to Ryanair was not made public knowledge before the various agreements were signed. However, VTAN made the same proposals to all airlines, which therefore enabled all interested airlines to offer their services as Ryanair did' ([169]). As a result, the non-discrimination condition, as set out in the 2005 Guidelines, was not met by any of the measures in question. Proposals made privately to certain airlines chosen at the discretion of the airport operator are not enough to meet this condition.

([163]) See footnote 38.
([164]) Letter from France of 20 March 2014, p. 8.
([165]) The amount of aid must be strictly linked to the additional start-up costs incurred in launching the new route or frequency and which the air operator will not have to bear once it is up and running.
([166]) Aid payments must be linked to the net development of the number of passengers transported.
([167]) Article 8 of the airport services agreement of 1 January 2007.
([168]) The only destinations for which the number of passengers was taken into account were Charleroi and East Midlands (Article 8.2 of the airport services agreement of 1 January 2007).
([169]) Letter from France of 25 April 2014, paragraph 102.

(552) Given all the above, the Commission considers that none of the unlawful aid granted to Ryanair/AMS through the agreements covered by this investigation meets all the criteria established by the 2005 Guidelines. Accordingly, the aid resulting from the following measures is incompatible with the internal market:

— the airport services and marketing services agreements of 2 January 2007 signed by VTAN with Ryanair/AMS,

— the amendments of 1 August 2007 to the agreements of 2 January 2007,

— the airport services and marketing services agreements of 1 November 2007 signed by VTAN with Ryanair/AMS,

— the airport services and marketing services agreements of 27 August 2008 signed by VTAN with Ryanair/AMS,

— the amendments of 25 August 2009, 18 August 2010 and 30 November 2010 to the agreements of 27 August 2008.

7.2. *ASSESSMENT OF THE FINANCIAL SUPPORT FOR THE CCI-AIRPORT AND VTAN*

(553) In this part the Commission will assess the various financial support measures granted to the CCI-Airport and VTAN, as described in Section 3.2.

7.2.1. EXISTENCE OF STATE AID WITHIN THE MEANING OF ARTICLE 107(1) TFEU

(554) Under Article 107(1) TFEU, any aid granted by a Member State or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the Treaty.

(555) For a measure to be classed as State aid the following cumulative criteria therefore have to be met:

— the beneficiary must be an undertaking within the meaning of Article 107(1) TFEU, which presupposes that it carries on an economic activity,

— the measure in question must be granted through state resources and be imputable to the state,

— the measure must confer a selective advantage on its beneficiary or beneficiaries,

— the measure in question must distort or threaten to distort competition and be likely to affect trade between Member States.

(556) In order to determine whether the aforementioned subsidies constitute State aid, it should firstly be ascertained whether their successive beneficiaries, namely the CCI-Airport and VTAN, were undertakings, i.e. carried on economic activities at the time when those measures were granted. In connection with this question, the Commission will then assess the subsidies received by the CCI-Airport and VTAN under the national system for financing sovereign tasks in French airports, as described in recital 32 et seq. Lastly, the Commission will examine whether or not the operation of Nîmes airport may have constituted a service of general economic interest during the period in question. After having made these three preliminary assessments and using their results, the Commission will assess each of the measures covered by this investigation in order to determine whether it constitutes State aid.

7.2.1.1. ***Concepts of undertaking and economic activity***

(557) As the Commission has explained in the new Guidelines ([170]), from the date of the judgment in *Aéroports de Paris* (12 December 2000), the operation and construction of airport infrastructure must be considered as falling within the ambit of State aid control. Conversely, due to the uncertainty that existed prior to this judgment, public authorities could legitimately consider that the financing of airport infrastructure did not constitute State aid and, accordingly, that such measures did not need to be notified to the Commission. It follows that the Commission cannot now bring into question, on the basis of State aid rules, financing measures granted before 12 December 2000.

(558) Furthermore, as also indicated in the new Guidelines ([171]), not all the activities of an airport are necessarily of an economic nature. Activities that normally fall under the responsibility of the state in the exercise of its official powers as a public authority are not of an economic nature and in general do not fall within the scope of the rules on State aid.

(559) With regard to the CCI-Airport, the measures covered by the opening decision are subsidies received under the national system for financing sovereign tasks in French airports ('sovereign task subsidies'), various exceptional operating subsidies received from various public authorities and from the CCI's general arm between 2000 and 2006, repayable advances granted to the CCI-Airport by the CCI's general arm between 2002 and 2006 ('repayable advances'), and the alleged non-billing of overheads incurred by the CCI's general arm specified in the new Guidelines with regard to the compatibility of the operating aid granted to the CCI's general arm in connection with the operation of the airport during the 2000-2006 period.

(560) It is clear from the explanations provided by France, summarised in recitals 55 to 57, that, except for certain subsidies from the FIATA, which formed part of the sovereign task subsidies and which will be examined further on, only the subsidies of EUR 250 000, EUR 600 000 and EUR 500 000 received in 2005 and the subsidy of EUR 200 000 received from the CCI's general arm in 2006 ('the exceptional operating subsidies') were used to finance the airport's economic activity. These subsidies were intended to cover the operating deficit resulting from the imbalance between operating costs and revenues generated from making the airport infrastructure available to passengers and airlines. As these subsidies were granted after 12 December 2000 and were used to finance the airport's economic activity, they may, with regard to the concepts of undertaking and economic activity, fall within the scope of the rules on State aid. The same is true for the repayable advances, which were also granted after 12 December 2000 and used to ensure the financial stability of the airport's operating account.

(561) As regards the alleged non-billing of overheads incurred by the CCI's general arm in connection with the operation of the airport during the 2000-2006 period, this was an assumption made by the Commission in the opening decision. However, as indicated in recital 59, France has provided information showing that, in actual fact, the CCI's general arm rebilled the CCI-Airport for the part of its overheads attributable to the airport's activity, based on an objective cost allocation key. This conduct is in line with that of an MEO motivated by the prospect of profits in its relations with a subsidiary or division using its general services. Consequently, the assumption made in the opening decision concerning the alleged non-billing of certain overheads of the CCI's general arm is factually incorrect, and the overheads billing system applied by the CCI did not grant any advantage to the CCI-Airport. This 'measure' does not therefore need to be considered any further in this decision. Likewise, the information provided by France on the investments made within Nîmes airport when it was being managed by the CCI, which are the subject of recital 51, shows that the CCI-Airport bore the cost of these investments on its own and was responsible for making and financing these investments. There are therefore no investment subsidies to the CCI-Airport to be examined in this assessment.

(562) As regards the measures granted to VTAN, the main measure is the flat-rate contribution, as established by the CDSP and subsequently amended. This flat-rate contribution was intended to cover the operating deficit resulting from the imbalance between operating costs and revenues generated from making the airport infrastructure available to passengers and airlines, taking into account the costs of certain investments for which VTAN was responsible according to the CDSP and its amendments. As the flat-rate contribution was established and amended after 12 December 2000 and was used to finance the airport's economic activity, it falls within the scope of the rules on State aid.

([170]) New Guidelines, points 28 and 29.
([171]) New Guidelines, points 34 and 35.

(563) The other measures granted to VTAN that are covered by the formal investigation procedure involve a specific public contribution paid for 2011 in order to take account of the new operating costs incurred by VTAN following the closure of the airbase ('the specific public contribution') and equipment subsidies for 2011 and 2012 ('the equipment subsidies'). These various measures, granted after 12 December 2000, were used, at least in part, to finance the airport's operation (including its commercial activity of making available the airport infrastructure) as well as investments inherent in the airport's commercial activity. With regard to the concepts of undertaking and economic activity, these measures may therefore fall within the scope of the rules on State aid.

(564) As a result, the Commission will now examine the sovereign task subsidies and:

— for the CCI operating period, the exceptional operating subsidies and the repayable advances,

— for the VTAN operating period, the flat-rate contribution, the specific public contribution and the equipment subsidies.

7.2.1.2. ***Sovereign task subsidies***

(565) As pointed out by the Commission in the new Guidelines, the Court of Justice has held that activities that normally fall under the responsibility of the state in the exercise of its official powers as a public authority are not of an economic nature and in general do not fall within the scope of the rules on State aid ([172]). According to the new Guidelines ([173]), activities such as air traffic control, police, customs, aircraft firefighting, measures designed to protect civil aviation from acts of unlawful interference, and investment in the infrastructure and equipment needed for such activities are regarded, as a general rule, as not being economic in nature.

(566) The new Guidelines also stipulate that, so as not to constitute State aid, the public financing of such non-economic activities must be strictly limited to compensating the costs to which they give rise and must not lead to undue discrimination between airports. The guidelines clarify with regard to this second condition that, when it is normal under a given legal order that civil airports have to bear certain costs inherent in their operation, whereas other civil airports do not, the latter might be granted an advantage, regardless of whether or not those costs relate to an activity which in general is considered to be of a non-economic nature ([174]).

(567) The activities financed by the general system for financing sovereign tasks in French airports, as described in recital 32 et seq., relate to safeguarding civil aviation against acts of unlawful interference ([175]), police tasks ([176]), aircraft rescue and firefighting ([177]), air traffic safety ([178]) and the protection of the natural and human environment ([179]). These activities can legitimately be regarded as falling under the responsibility of the State in the exercise of its official powers as a public authority. Consequently, France may legitimately regard these tasks as 'sovereign' in nature, in other words non-economic, under the rules on State aid. It may therefore provide for public financing to compensate the costs incurred by airport operators in carrying out these tasks in so far as these are entrusted to the latter by national law and provided that this financing does not give rise to overcompensation or discrimination between airports.

([172]) Judgments in *Commission* v *Italy*, C-118/85, EU:C:1987:283, paragraphs 7 and 8, and in *Bodson* v *Pompes funèbres des régions libérées*, C-30/87, EU:C:1988:225, paragraph 18.
([173]) New Guidelines, point 35.
([174]) New Guidelines, points 36 and 37.
([175]) This category includes screening of hold baggage, screening of passengers and cabin baggage, and access control to the restricted area.
([176]) This category includes automated border controls through biometric identification.
([177]) As indicated above, these three categories are explicitly referred to in the new Guidelines as examples of non-economic activities.
([178]) This category includes wildlife hazard prevention.
([179]) This category includes environmental control measures.

(568) It is clear from the description in recital 32 et seq. that the system laid down by French law is based on strict cost control mechanisms, both *ex ante* and *ex post*, ensuring that airport operators receive, through the airport tax and additional financing instrument, only those amounts strictly needed to cover the costs.

(569) Moreover, this system applies to all French civil airports in terms of both the types of task giving rise to compensation and the financing mechanisms. The non-discrimination condition is therefore met. Although French law entrusts airport operators with sovereign tasks, it does not require them to finance those tasks, but rather the State. Accordingly, the compensation of the costs arising from those tasks by public funds does not reduce the costs that airport operators should normally bear under French law.

(570) This national system has been applied to Nîmes airport since 2000. As a result, the financing received by the CCI-Airport and VTAN under this system does not constitute State aid. This conclusion applies, inter alia, to the subsidies received by the CCI-Airport from the FIATA, as mentioned in recital 55.

7.2.1.3. ***State resources and imputability to the state***

(571) The various measures still to be examined were granted by local authorities (the CGG, the CAAC and the CANM), the SMAN (which is a group of local authorities) and the CCI.

(572) The resources of local authorities are state resources within the meaning of Article 107(1) TFEU ([180]). Furthermore, the conduct of such authorities falls within the scope of that article, in the same way as measures taken by the central authority, if the conditions of that provision are met ([181]). Accordingly, decisions of local authorities such as the CGG, the CAAC and the CANM must be regarded as imputable to the state (in the broad sense) within the meaning of the case-law on State aid.

(573) This conclusion is valid, by extension, for a group of local authorities such as the SMAN. Moreover, as indicated in Section 2.2, the SMAN's budget is funded by contributions from the constituent local authorities. In fact, the SMAN's resources mainly consist of: (i) contributions from its members; (ii) subsidies; (iii) income from gifts and legacies; (iv) income from loans; (v) income from charges paid by operators; and (vi) more generally, all direct and indirect income associated with exercising the power defined by the SMAN's articles of association. Moreover, the SMAN is managed by a board consisting solely of representatives of its member local authorities. As a result, the SMAN's resources are state resources and all its decisions are 'imputable to the state' within the meaning of the case-law on State aid.

(574) As regards the measures granted by the CCI's general arm to the CCI-Airport, as established previously in the section on state resources and imputability (Section 7.1.1.1), the CCI is a public authority and therefore all its resources must be regarded as state resources and all its decisions are 'imputable to the state' within the meaning of the case-law on State aid.

(575) As a result, all the measures covered by this assessment are 'imputable to the state' and financed through state resources.

7.2.1.4. ***Selective economic advantage***

(576) In order to ascertain whether a state measure grants an advantage to an undertaking pursuant to Article 107(1) TFEU, it must be determined whether the undertaking in question received an economic advantage enabling it to avoid having to bear costs that would normally have had to be met out of its own financial resources, whether it received an advantage that it would not have received under normal market conditions ([182]), or whether the measure in question can be regarded as public service compensation satisfying the conditions of the *Altmark* judgment.

([180]) Judgment in *Région Nord-Pas-de-Calais*, T-267/08 and T-279/08, EU:T:2011:209, paragraph 108.
([181]) Judgment in *Territorio Histórico de Álava — Diputación Foral de Álava*, T-127/99, T-129/99 and T-140/99, EU:T:2002:59, paragraph 142.
([182]) Judgment in *France* v *Commission*, C-301/87, EU:C:1990:67, paragraph 41.

7.2.1.4.1. **Concept of service of general economic interest and application of the *Altmark* judgment**

7.2.1.4.1.1. *Application of the concept of service of general economic interest*

(577) It must be ascertained whether the various measures still to be examined can be regarded as public service compensation granted in order to provide a genuine service of general economic interest ('SGEI').

(578) In this regard, it should be recalled that the Court of Justice ruled in the *Altmark* judgment that public service compensation does not constitute State aid within the meaning of Article 107(1) TFEU when four cumulative conditions are met. First, the recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined. Second, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner. Third, the compensation must not exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a reasonable profit. Finally, where the undertaking that is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs that a typical undertaking, well-run and adequately provided with the relevant means, would have incurred. In order to apply these conditions, the first point to be examined is the existence of a genuine SGEI.

(579) France takes the view, which is shared by the Operators, that the overall management of Nîmes airport, given its size and local role, should be regarded as an SGEI. According to France: 'Even if it is considered that Languedoc-Roussillon is not an isolated region and that its accessibility is not dependent upon the air routes offered by Nîmes airport, which is debatable as shown in point 2 below, the fact remains, in the light of all the above, that the operation of Nîmes airport involves a series of public service obligations and that the Commission has not proven that a private market economy operator would have been prepared to assume such obligations, to the same extent or under the same conditions, in the absence of public service compensation. In this respect, it is irrelevant whether or not the airport is situated in an isolated region. Both the Commission's guidelines and settled case-law recognise that Member States have a margin of discretion when defining public service obligations. The determining factor for establishing the existence of an SGEI is whether an operator considering its own commercial interest would assume the service in question to the same extent or under the same conditions' ([183]).

(580) This reasoning is vitiated by a manifest error of assessment. In actual fact, in order to assess the extent to which the operation of an airport is an SGEI, the need in the general interest met by that activity must be considered. In this regard, the airport's size is also not a relevant criterion.

(581) As the Commission has already indicated in its decision-making practice: 'Economic development is not … sufficient to justify a service being defined as an [SGEI]. Such a definition must be based on public service reasons going beyond the general interest of developing economic activities' ([184]). The Treaty already contains a specific compatibility clause for aid to facilitate the development of economic activities (Article 107(3)(c)), whilst, according to the case-law of the Court of Justice, SGEIs are services that exhibit special characteristics as compared with the general economic interest of other economic activities ([185]) and undertakings entrusted with SGEI tasks are undertakings entrusted with a 'particular task' ([186]). Generally speaking, the entrustment of a 'particular public service task' implies the supply of services which, if it were considering its own commercial interest, an undertaking would not assume or would not assume to the same extent or under the same conditions ([187]). Applying a general interest criterion, Member States or the Union may attach specific obligations to such services.

([183]) France's comments on the opening decision.
([184]) See decision N 381/04 — *France, Project for a high capacity telecommunications network in the Pyrénées-Atlantiques (Dorsal)* (OJ C 162, 2.7.2005, p. 5), paragraph 53.
([185]) See judgment in *Merci convenzionali porto di Genova*, C-179/90, EU:C:1991:464, paragraph 27; judgment in *GT-Link A/S*, C-242/95, EU:C:1997:376, paragraph 53 and judgment in *Corsica Ferries France SA*, C-266/96, EU:C:1998:306, paragraph 45.
([186]) See in particular judgment in *BRT* v *SABAM*, C-127/73, EU:C:1974:25.
([187]) See communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest (OJ C 8, 11.1.2012, p. 4), paragraphs 46 and 47.

(582) The Commission has also indicated in the new Guidelines: 'As far as airports are concerned, the Commission considers that it is possible for the overall management of an airport, in well-justified cases, to be considered an SGEI … the Commission considers that this can only be the case if part of the area potentially served by the airport would, without the airport, be isolated from the rest of the Union to an extent that would prejudice its social and economic development. Such an assessment should take due account of other modes of transport, and in particular of high-speed rail services or maritime links served by ferries' ([188]).

(583) As a result, the contribution of Nîmes airport to local economic development, which is the main factor highlighted by France in support of its theory regarding the existence of a genuine SGEI, is not in itself a relevant factor as it must be considered separately from the contribution of that airport to the region's accessibility. It is not disputed that, by improving a region's accessibility, particularly when it breaks its isolation, an airport can have positive effects on local economic development. However, the simple fact that the presence and activity of an airport generate direct and indirect jobs and stimulate the activity of local undertakings cannot be regarded as a relevant criterion for establishing the existence of a genuine SGEI.

(584) As regards the contribution of Nîmes airport to the region's accessibility, France has recognised in particular that Montpellier airport is situated just 63 km from Nîmes airport, which represents a journey time of only 49 minutes by road. It has also recognised that Nîmes has been served by a high-speed rail service (TGV) since 2001. This town is therefore connected, for example, to Paris and Lyon by regular train services with journey times of around 3 hours and 1 hour 30 minutes respectively. France has omitted to take account of this rail service in its arguments on the existence of an SGEI. As regards the road network, the town of Nîmes is situated right next to the A9 and A54 motorways, which directly connect it to the main cities in the south-eastern quarter of France, notably Lyon, Marseille and Montpellier. In the light of this information, it cannot be argued that part of the area potentially served by Nîmes airport would, without the airport, be isolated from the rest of the Union to an extent that would prejudice its social and economic development.

(585) As regards Montpellier airport, France has indicated as follows: 'although the above information tends to place it in the same catchment area as Nîmes airport due to the journey time of less than 60 minutes and the cost of the return journey not exceeding EUR 20, it should, however, be stressed that the Ryanair routes from Montpellier airport, which currently number four, meet a tourist demand that is situated more to the west than to the east of the airport (the route to Hahn is an example of this, even though Ryanair has withdrawn its routes to Germany from Marseille) and that Nîmes airport covers a different catchment area from part of Montpellier airport's catchment area (in particular the Cévennes, Uzège and the northeast of Gard/south of the Ardèche in the Rhône valley). It therefore has a particular catchment area. It should also be noted that 51 % of low-cost passengers travel less than 50 km from their airport'.

(586) France has therefore recognised that there are factors suggesting that Nîmes airport is situated within the same catchment area as Montpellier airport. Under these circumstances, it cannot be argued that the presence of Nîmes airport may prevent an isolation that could prejudice the social and economic development of part of the area served by that airport, particularly as Nîmes airport is served by the TGV, as indicated above. France has also not provided any information allowing the extent of such a hypothetical prejudice to be assessed. The fact that the catchment areas of Nîmes and Montpellier airports are not exactly the same is not a sufficient argument. In fact, the catchment areas of two separate airports, however close they may be, never exactly coincide. Lastly, the fact that 51 % of low-cost passengers travel less than 50 km from their airport does not prove that, without Nîmes airport, travellers wanting to travel to or from the catchment area of that airport would not be prepared, to a large extent, to use flights that start or end at Montpellier airport.

(587) France has also argued that the development of the air traffic task entrusted to VTAN through the CDSP 'can be regarded as a public service obligation within the meaning of the *Altmark* case-law'. According to France, this task concerns the 'economic and tourism development of the area', which requires, in its opinion, '(i) an increase in passenger flows, generating income and jobs for the regional economy …; and (ii) the development of the enterprise zone situated adjacent to the airport'. As regards this enterprise zone, France refers to several undertakings established there and indicates that 'Within this industrial hub, VTAN has the task of developing aviation-related activities and building the industrial or commercial activity that can generate jobs for the area' ([189]).

([188]) New Guidelines, point 72.
([189]) France's comments on the opening decision.

(588) This argument cannot be accepted given that, as recalled above, the simple contribution of an activity to local economic development is not in itself sufficient to justify that activity being defined as an SGEI. Moreover, the commercial development of an airport by introducing new air routes or expanding non-aeronautical activities cannot as such satisfy the general interest criterion for definition as an SGEI. In particular, the Commission takes the view that the compensation by public authorities of the net costs incurred in the provision of an SGEI should not affect the economic incentive for an airport operator to enter into commercial relations with airlines.

(589) As a result, in the light of all the above and the arguments submitted by France, and particularly given the proximity of Montpellier airport and the TGV service from which Nîmes benefits, the Commission takes the view that France has committed a manifest error of assessment in claiming that the overall management of Nîmes airport was an SGEI. In particular, the activity of the Nîmes airport operator consisting of handling commercial passenger transport flights at that airport cannot be regarded as a genuine SGEI. It therefore follows that, in so far as the various financial support measures covered by this assessment were intended to finance the operation of the airport's activity as a whole, they cannot be regarded as financial compensation granted with a view to the management of a genuine SGEI. As a result, they do not satisfy the cumulative conditions of the *Altmark* judgment.

(590) Furthermore, even if all or part of the management of Nîmes airport could validly be defined as an SGEI, the measures in question would still not satisfy the cumulative conditions of the *Altmark* judgment. In fact, they do not satisfy the first, second and fourth conditions of that judgment, as will be proven further on in the light of the Communication on the application of the State aid rules to compensation granted for the provision of an SGEI ([190]) ('the SGEI communication'). The Commission considers that, in the case of Nîmes airport, these conditions of the *Altmark* judgment should be assessed by distinguishing between the entities that effectively carried on this economic activity during the 2000-2012 period.

7.2.1.4.1.2. *Clearly defined public service obligations discharged by the undertaking (first condition)*

(591) As France has committed a manifest error of assessment by defining the overall management of the airport as an SGEI and as the measures covered by the present assessment were used to finance the airport's operation as a whole, the first *Altmark* condition is not satisfied.

(592) In addition, according to the SGEI communication ([191]), in order for the first *Altmark* condition to be satisfied, the public service task must be assigned by way of one or more acts that, depending on the legislation in Member States, may take the form of legislative or regulatory instruments or contracts. Moreover, the act or series of acts must at least specify the content and duration of the public service obligations, the undertaking and, where applicable, the territory concerned, the nature of any exclusive or special rights assigned to the undertaking by the authority in question, the parameters for calculating, controlling and reviewing the compensation, and the arrangements for avoiding and recovering any overcompensation. The only acts produced by France that could possibly fulfil this function are the 1965 Order, the Concession Agreement, the CDSP and their subsequent amendments, in so far as they impose various obligations on the CCI in terms of operation (including on points such as opening times or equal treatment of users), servicing, maintenance and development, for a specified period. However, aside from the CDSP and its amendments, which apply only to VTAN, none of these acts lays down arrangements for calculating and reviewing any financial compensation mechanism. As a result, the acts having assigned obligations to the CCI-Airport do not meet the requirements of the first *Altmark* condition, even regardless of the fact that the obligations imposed on the CCI-Airport do not form a genuine SGEI.

7.2.1.4.1.3. *Compensation parameters established in advance in an objective and transparent manner (second condition)*

7.2.1.4.1.3.1. CCI-Airport operating period (2000-2006)

(593) The exceptional subsidies and repayable advances received by the CCI-Airport were all exceptional measures granted on an ad hoc basis to finance the airport's operating deficit. They did not therefore stem from calculation parameters that were established in advance.

([190]) Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest (OJ C 8, 11.1.2012, p. 4).

([191]) OJ C 8, 11.1.2012, p. 4, paragraph 52.

(594) It should be noted that the CCI-Airport's tasks for the period from 2000 to February 2006 were specified in the 1965 Order and its annexed schedule of conditions and in the 1986 AOT. However, these acts did not provide for any financial compensation mechanism for the CCI, based on parameters established in advance in an objective and transparent manner.

(595) Likewise, the Concession Agreement, which defined the CCI-Airport's obligations for the period from February to December 2006, also did not provide for any financial compensation mechanism for the operator.

(596) As a result, the financial support measures granted to the CCI-Airport do not satisfy the second *Altmark* condition.

7.2.1.4.1.3.2. VTAN operating period (2007-2012)

(597) The compensation paid to VTAN by the SMAN was granted under the CDSP and its annexes, which stipulated the obligations of both parties within the airport operation task and which defined the arrangements for calculating the flat-rate contribution paid to VTAN by the SMAN.

(598) However, the arrangements for calculating this contribution were subsequently altered by four amendments. In particular, amendment No 3 to the CDSP provided for the SMAN to grant VTAN a subsidy of EUR [100 000-300 000] for 2009 and specifically altered the wording of Clause 27-4 of the CDSP, which from that date stipulated that 'the flat-rate contribution may be increased by the amount of subsidies received by the Delegating Authority from other authorities'. Amendment No 3 therefore introduced new calculation parameters, which were not objective because they were unconnected with VTAN's costs and revenues.

(599) As a result, the flat-rate contribution does not satisfy the second *Altmark* condition. The specific public contribution and equipment subsidies referred to in recital 565 also do not satisfy this condition because they involved exceptional financial support that was not established at the start.

7.2.1.4.1.4. *Arrangements for selecting the service provider (fourth condition)*

7.2.1.4.1.4.1. CCI-Airport operating period (2000-2006)

(600) The CCI was not chosen to operate the airport following an invitation to tender procedure and the Commission does not have any information indicating that the amounts of the financial support measures that it received may have been determined on the basis of an analysis of the costs which a typical undertaking, well-run and adequately provided with the relevant means, would have incurred.

(601) As a result, the financial support measures granted to the CCI-Airport do not satisfy the fourth *Altmark* condition.

7.2.1.4.1.4.2. VTAN operating period (2007-2012)

(602) Veolia Transport was selected following a negotiated procedure, which was preceded by a notice of a competitive public tender published in the *Official Journal of the European Union*. Under EU law, the French authorities therefore had recourse to a negotiated procedure with prior publication of a contract notice ([192]).

([192]) Article 30 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114).

(603) The Commission generally takes the view that a negotiated procedure with prior publication can be deemed to satisfy the fourth *Altmark* condition only in exceptional cases ([193]). It notes, in this respect, that, once the two tenderers having responded to the invitation to tender had submitted their tenders, the SMAN initiated negotiations with each one ([194]). Contacts were made in particular between Veolia Transport and the SMAN in order to clarify, and even amend, certain important aspects of Veolia Transport's tender. France has indicated, for example, that on 20 September 2006 Veolia Transport made further proposals over and above its initial tender, in the light of information contained in the SMAN's letter of 6 September 2006. Moreover, on 4 October 2006 Veolia Transport submitted a series of clarifications amending essential elements of its tender, such as (i) introducing a 'downturn scenario' leading to a change in the flat-rate contribution if the airport's activity were to be reduced; (ii) changing the formulas stipulated for updating the general balance of the delegation; or even (iii) amending the undertakings made with regard to staff costs ([195]).

(604) Moreover, in the decision awarding the contract ([196]) at the end of the procedure, the SMAN stated that Veolia Transport's tender was the most advantageous with regard to the criteria laid down by the consultation rules, in particular: (i) commercial development policy; (ii) financial control; (iii) security; and (iv) quality undertaking ([197]). However, the criteria in question left the SMAN with plenty of room for manoeuvre in the choice of service provider, as these criteria were worded very generally and went beyond the quality of the service provided and the cost to the community. This was particularly the case with the criterion entitled 'commercial development policy', which cannot be likened in any way to a quality criterion for an SGEI.

(605) For all these reasons, the procedure followed by the SMAN was unlikely to ensure that 'the tenderer capable of providing the services concerned at the least cost to the community' was selected. Furthermore, there is no evidence that the cost forecasts produced by VTAN, based on which the flat-rate contribution was established, corresponded to the costs that a typical undertaking, well-run and adequately equipped, would have incurred in operating the airport. In this respect, it seems that VTAN mainly used the CCI-Airport's operating figures to establish its forecasts. However, there is nothing to confirm that the CCI-Airport acted as a typical undertaking, well-run and adequately equipped.

(606) As a result, the financial support measures granted to VTAN do not satisfy the fourth *Altmark* condition.

(607) As established above, none of the measures in question satisfies the cumulative conditions of the *Altmark* judgment. It therefore remains to determine whether the various measures in question were likely to enable the CCI-Airport or VTAN to avoid having to bear costs that would normally have had to be met out of their own financial resources or whether these corresponded to normal market conditions.

7.2.1.4.2. **Analysis of the existence of an economic advantage — Measures likely to enable the CCI-Airport and VTAN to avoid costs that they would normally have had to bear**

7.2.1.4.2.1. *CCI-Airport operating period (2000-2006)*

(608) The 'exceptional subsidies' totalling EUR 1,35 million received in 2005 from the CAAC, the CANM and the CGG were non-repayable subsidies granted without any prospect of a return on their investment for the authorities concerned. The same was true of the subsidy of EUR 200 000 granted to the CCI-Airport by the CCI's general arm in 2006. This non-repayable subsidy was in fact granted in order to finance the operating deficit that the CCI-Airport was facing in the final year of the period during which it operated the airport, and there was consequently no prospect of profitability for the CCI's general arm.

(609) With regard to the repayable advances, it should firstly be noted that these were equivalent to interest-free loans granted by the CCI's general arm to the CCI-Airport. According to France, 'The fact that the advances were made available without applying an interest rate is not moreover sufficient for the Commission to conclude that they constituted State aid. In accordance with General Court case-law, it must be accepted that lenders, due to their prior capacity as shareholders, can agree to grant interest-free loans or guarantees not remunerated by premiums. Likewise, it should be accepted that it was normal for the CCI, as the airport concession-holder, to make sufficient

([193]) Aforementioned communication, paragraph 65.
([194]) See footnote 85.
([195]) Veolia Transport document of 4 October 2006: *Précisions concernant notre offre selon les demandes du Syndicat Mixte au 29.9.2006* (Clarifications on our tender according to the requests of the Syndicat Mixte of 29.9.2006).
([196]) Decision of 30 November 2006.
([197]) Report summarising the tender analysis with a view to awarding the public service delegation for the operation of the civilian area of Nîmes-Garons Airport of 23 November 2006.

resources available to its airport arm so that the latter could ensure the continued operation of Nîmes airport' ([198]) (footnotes omitted). Such an argument might be relevant only if, by granting these advances to allow the continued operation of Nîmes airport, the CCI expected the airport to become profitable in the more or less long term, allowing the CCI not only to see these advances repaid, but also to receive a 'return on its investment' remunerating the capital committed, through any profits made by the airport.

(610) The Commission therefore questioned France on the profits that the CCI might have expected from granting these repayable advances. However, in its reply ([199]), France did not mention any hypothetical profit expected from granting these subsidies. It simply referred to the concession's schedule of conditions, annexed to the 1965 Order, according to which, at the end of the concession, the state undertook to repay to the CCI the balance of the advances granted to its airport arm. In its reply, France did not mention any prospect of a 'return' on the repayable advances, aside from the assurance of this repayment by the state at the end of the concession.

(611) Quite clearly, at the time when it granted the various repayable advances, the CCI could not have expected the airport's operation to become profitable, allowing the CCI-Airport to repay the advances granted while leaving a profit margin that could remunerate the capital committed by the CCI's general arm. In fact, the repayable advances were granted from 2002. At that stage, Air France had already withdrawn from Nîmes airport and the town was already being served by the TGV. Furthermore, as shown by Table 2, the airport's losses since 1999 steadily became worse from that date, increasing from EUR 269 000 to EUR 796 000. Its losses continued to worsen after that date, reaching EUR 2,4 million in 2003 (the year when Air Littoral terminated its services to Paris), before falling to EUR 643 000 in 2005. Lastly, as shown by the analysis of the agreements between the CCI-Airport and Ryanair/AMS, in 2002 the CCI-Airport had already started to sign agreements with Ryanair that would erode the airport's profitability, which it did until 2005 inclusive. Finally, in the absence of the exceptional subsidies, the CCI-Airport's results would have been even worse, thus ruling out any prospect of a return on the capital invested.

(612) In the light of all these factors, the CCI could not have considered that there was any likelihood of it receiving any return, in the more or less short term, on the capital that it had committed through the advances granted to the CCI-Airport. The CCI could even have legitimately harboured serious doubts that the CCI-Airport would one day be able to repay the CCI. Very significant repayable advances therefore had to be granted every year from 2002 to 2006, totalling around EUR 7 million, which was in addition to EUR 2,7 million of repayable advances granted up to the end of 2001.

(613) In this respect, France has stated that no precise deadline was set for repayment of the advances by the CCI-Airport and that these advances were determined each year in order to balance the CCI-Airport's budget.

(614) Furthermore, although it was stipulated that the state would repay the balance of the repayable advances at the end of the concession, it was not planned for it to pay any interest rate correctly remunerating the credit granted by the CCI to its airport arm.

(615) Given all the above, it seems that the CCI did not act towards its airport arm as an MEO motivated by the prospect of profits would have done.

(616) In conclusion, the exceptional subsidies and repayable advances each conferred an economic advantage on the CCI-Airport. In addition, as these advantages each benefited a single undertaking, they were selective.

7.2.1.4.2.2. *VTAN operating period (2007-2012)*

(617) Under the CDSP, the SMAN undertook to pay a flat-rate contribution to VTAN throughout the term of the public service delegation, amounting to EUR [1,2-1,5] million in the 'reference scenario' and EUR [1,0-1,3] million in the 'downturn scenario'. VTAN undertook to pay an annual fee of one euro for the occupation of the land, structures and infrastructure. As this agreement represented a significant net cost for the SMAN, which could not have expected any tangible financial return on the amounts committed under this agreement, it did not correspond to normal market conditions and conferred an economic advantage on VTAN.

([198]) France's letter of 27 July 2012.
([199]) See footnote 47.

(618) Amendment No 1 to the CDSP increased the flat-rate contribution by EUR [20 000-50 000], without any prospect of a return for the SMAN. This was intended to compensate for the loss of revenue that VTAN could have expected on becoming the airport operator, but which it was forced to relinquish subsequently. Like the CDSP itself, Amendment No 1 represented a net cost for the SMAN without any prospect of a return, and did not correspond to normal market conditions. It therefore conferred an economic advantage on VTAN.

(619) The same reasoning applies to Amendment No 3, which again increased the amount of the flat-rate contribution without any prospect of a return for the SMAN, and therefore conferred an economic advantage on VTAN.

(620) However, the situation is different for Amendment No 2. This stipulated that VTAN would renew the terminal's air-conditioning system and that the SMAN would compensate VTAN for the undepreciated value of the equipment at the end of the delegation. However, prior to the signature of Amendment No 2, Article 25.2 of the CDSP stipulated that all the necessary investments were the responsibility of the SMAN, except for a limited list of investments that were VTAN's responsibility under Article 25.1 of the CDSP. As a result, without Amendment No 2, it would have been the SMAN, and not VTAN, that would have had to finance the renewal of the air-conditioning system, which had become unusable. Amendment No 2 did not therefore reduce the costs that would normally have had to be met out of VTAN's financial resources. On the contrary, it represented a financially advantageous solution for the SMAN, which would have had to cover the investment in question, but which, thanks to Amendment No 2, did not have to commit the necessary sums and only had to finance the undepreciated value of the equipment at the end of the delegation. Amendment No 2 did not therefore confer any economic advantage on VTAN and is not therefore State aid.

(621) Likewise, Amendment No 4 made VTAN responsible for investments that were not its responsibility under the terms of the CDSP, by providing for 'equipment subsidies' in order to finance them. It was stipulated that the equipment subsidies would be readjusted at the end of the delegation in order to bring the payments into line with the expenditure actually incurred by VTAN. Without Amendment No 4, the corresponding investment costs, which became necessary due to the closure of the airbase, would have had to be met by the SMAN. The equipment subsidies did not therefore reduce the costs that would normally have had to be met out of VTAN's financial resources.

(622) On the other hand, from the SMAN's point of view, it was economically rational to ask VTAN, as the airport operator, to make the necessary investments identified by working groups composed of various stakeholders, by granting it financial compensation limited to the costs incurred, through the readjustment mechanism at the end of the delegation. In operational terms, it was in fact efficient for the airport operator to make these investments. The equipment subsidies did not therefore confer any economic advantage on VTAN and are not State aid.

(623) As regards the specific public contribution, also established by Amendment No 4, this was a subsidy granted by the SMAN without any prospect of a return, just like the flat-rate contribution established by the initial version of the CDSP. It did not correspond to normal market conditions. It therefore conferred an economic advantage on VTAN.

(624) In conclusion, the flat-rate contribution, as established by the initial version of the CDSP and increased by Amendments Nos 1 and 3, conferred an economic advantage on VTAN. In addition, as these advantages benefited a single undertaking, they were selective. The same is true for the specific public contribution. On the other hand, neither Amendment No 2 nor the equipment subsidies conferred any economic advantage on VTAN. These measures do not therefore constitute State aid.

7.2.1.5. ***Effect on intra-EU trade and competition***

(625) Nîmes airport is in particular in competition with other airport platforms, and especially those serving all or part of the same catchment area, such as Montpellier and Avignon airports. Aid granted to the operator of Nîmes airport (the CCI-Airport or VTAN) therefore risks distorting competition. In this respect, the Commission notes that Montpellier airport is only 63 km from Nîmes airport. As the airport service market and air transport market are open to competition within the EU, aid also risks affecting trade between Member States.

(626) More generally it should be noted that EU airport operators are in competition with each other to attract airlines. Airlines decide on which routes to operate and their corresponding frequencies based on a range of criteria. These criteria not only include the potential customers that they can expect on these routes, but also the characteristics of the airports situated at either end of these routes.

(627) Airlines particularly look at criteria such as type of airport services provided, population or economic activity around the airport, congestion, whether there is access by land, or even the level of charges and overall commercial conditions for use of airport infrastructure and services. The charge level is a key factor, since public funding granted to an airport could be used to maintain airport charges at an artificially low level in order to attract airlines and may thus significantly distort competition ([200]).

(628) Consequently, airlines allocate their resources, particularly aircraft and crew, to the various routes by looking at the services offered by airport operators and the prices charged for those services, among other criteria.

(629) It is clear from the above that the various measures granted to the CCI-Airport and VTAN and covered by this assessment were likely, in so far as they conferred an economic advantage on one of these two undertakings, to have reinforced the respective positions of these two undertakings compared with other European airport operators. Consequently, these measures may have distorted competition and affected trade between Member States.

7.2.1.6. ***Conclusion on the existence of State aid***

(630) The sovereign task subsidies do not constitute State aid. The exceptional operating subsidies and repayable advances received by the CCI-Airport constitute State aid to the latter. The flat-rate contribution, as established by the initial version of the CDSP and increased by Amendments Nos 1 and 3, constitutes State aid to VTAN, as does the specific public contribution. Amendment No 2 and the equipment subsidies are not State aid.

7.2.2. UNLAWFULNESS OF THE AID

(631) The exceptional operating subsidies, repayable advances, flat-rate contribution and their various amendments, as also the specific public contribution, were implemented without being notified.

(632) The Commission Decision of 28 November 2005 on the application of Article 106(2) TFEU to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest ('the 2005 SGEI Decision') lays down the conditions under which certain aid granted as public service compensation may be exempt from the requirement of notification laid down in Article 108(3) TFEU. According to France, the measures granted to the CCI-Airport or VTAN after 19 December 2005 meet these conditions.

(633) The Commission considers that this is not the case. Firstly, the overall management of Nîmes airport cannot be regarded as a genuine SGEI, as proven above. Consequently, as the various aforementioned measures were granted to finance the overall management of the airport, they do not meet the criteria laid down by the 2005 SGEI Decision.

(634) Secondly, as indicated previously, even if the overall management of the airport could be defined as an SGEI, none of the measures in question stemmed from the application of a compensation mechanism for which the parameters were established in advance in an objective and transparent manner. In fact, as indicated previously, the measures in question do not satisfy the second *Altmark* condition. Accordingly, these measures do not satisfy the conditions laid down in Article 4(d) and (e) of the 2005 SGEI Decision, according to which the act or acts entrusting the operation of a service of general economic interest must specify the description of the compensation mechanism and the parameters for calculating, controlling and reviewing the compensation as well as the arrangements for avoiding and repaying any overcompensation. This is the second reason why the aforementioned measures could not have been exempted, under the 2005 SGEI Decision, from the requirement of notification laid down by Article 108(3) TFEU.

(635) In the light of the above, the exceptional operating subsidies, repayable advances, flat-rate contribution, as established by the initial version of the CDSP and increased by Amendments Nos 1 and 3, and specific public contribution constitute unlawful aid.

([200]) New Guidelines, point 43.

7.2.3. COMPATIBILITY WITH THE INTERNAL MARKET

(636) As proven above, France has committed a manifest error of assessment in claiming that the overall management of Nîmes airport was an SGEI. In particular, the activity of the Nîmes airport operator consisting in handling commercial passenger transport flights at that airport cannot be regarded as a genuine SGEI. These conclusions apply both to the CCI-Airport operating period and the VTAN operating period. In so far as the various financial support measures covered by this assessment were intended to finance the operation of the airport's activity as a whole, they cannot be regarded as financial compensation granted with a view to the management of a genuine SGEI.

(637) Moreover, as proven above, even if all or part of the management of Nîmes airport could have been validly defined as an SGEI, none of the financial support measures covered by this assessment stemmed from a financial compensation mechanism for which the parameters were established in advance in an objective and transparent manner, accompanied by parameters for calculating, controlling and reviewing the compensation and arrangements for avoiding and repaying any overcompensation. As a result, the measures in question do not satisfy the cumulative conditions established by the European Union framework for State aid in the form of public service compensation, which is applicable to this case *ratione temporis* ([201]). Moreover, for the same reasons and as proven in recitals 633 to 635, the measures in question also do not satisfy the cumulative conditions established by the 2005 SGEI Decision. Consequently, these measures cannot be declared compatible with the internal market on the basis of Article 106(2) TFEU.

(638) The Commission will now analyse the measures covered by this assessment in the light of the various criteria laid down in Article 107(3)(c) TFEU.

(639) All the State aid identified in this assessment is operating aid in so far as it was intended to finance the operation of Nîmes airport, and not specific investments made within that airport. All this operating aid was granted unlawfully before 4 April 2014, which was the date of entry into force of the new Guidelines, in which the Commission declared that it would apply the principles set out in those guidelines to all ongoing cases concerning operating aid to airports, even if that aid was granted before 4 April 2014 ([202]).

(640) According to the new Guidelines, operating aid granted to airports before 4 April 2014 may be declared compatible to the full extent of uncovered operating costs provided that a series of conditions is met ([203]). These conditions may be summarised as follows:

— the aid contributes to a well-defined objective of common interest (it increases the mobility of Union citizens and the connectivity of the regions, it combats air traffic congestion at major Union hub airports, or it facilitates regional development),

— state intervention is needed,

— the aid is an appropriate policy instrument,

— the aid has an incentive effect, in the sense that, in its absence, the level of economic activity of the airport concerned would be significantly reduced,

— the aid is proportionate, in the sense that it is limited to the minimum necessary for the aided activity to take place,

— distortions of competition caused by the aid and its effects on trade must be taken into account in the assessment.

(641) The Commission will apply these criteria to the aid in question.

([201]) Communication from the Commission — European Union framework for State aid in the form of public service compensation (2011) (OJ C 8, 11.1.2012, p. 15) paragraphs 16(d) and (e) and 69.

([202]) New Guidelines, point 172.

([203]) New Guidelines, point 137.

7.2.3.1. ***Contribution to a well-defined objective of common interest***

(642) In so far as this aid financed Nîmes airport's operating deficit, it allowed the airport to continue operating. As underlined by France, this airport's activity has a positive impact on the economic development of the Gard department, particularly in the tourism sector. Local economic development is recognised by the new Guidelines as an objective of common interest that could have justified operating aid being granted to an airport before 4 April 2014, if certain conditions were met.

(643) With regard to the tourism sector, it is undeniable that Nîmes airport serves a tourist region and that the scheduled flights offered by Ryanair to this airport since 2000 have brought significant flows of tourists into the Nîmes region. For example, the aforementioned 2006 study on the economic impact of Nîmes airport ([204]) states that, for 2006 alone, the tourists carried to Nîmes airport spent EUR 100 million in the local economy ([205]), including EUR 21 million on accommodation, EUR 26 million on meals, EUR 20 million on other food purchases, EUR 9 million on transport (excluding air transport), EUR 4 million on visits and EUR 6 million on souvenirs. The economic impact indirectly resulting from the airport's activities (i.e. the effect on the rest of the local economy) is estimated in that study at EUR 2,38 billion, taking account of the investment effect.

(644) Furthermore, this 2006 study indicates that 2 200 jobs were directly linked to the airport's activities ([206]). Accordingly, until the closure of the airbase in July 2011, this brought numerous families into the Nîmes area (over 800 children of military personnel attended school in the Gard department).

(645) The presence of both the airbase and civilian aviation activity also allowed an aviation-related industrial hub to develop at the airport site. This hub encompasses activities such as:

— GHSC (Groupement d'Hélicoptères de la Sécurité Civile), which is simultaneously the command centre for the 22 permanent and operational civil security bases spread throughout the mainland and the overseas departments, a maintenance centre for the Ministry of the Interior's helicopter fleet, and a staff training and continuous pilot training centre (number of staff at the site: 140),

— Sabena Technics (TAT group): a civil and military aviation maintenance services company (number of staff at the site: 336),

— AVDEF: Aviation Défense Service (EADS group), which is active in on-demand public transport and medical evacuation services, aerial work for the armed forces and forest firefighting (number of staff at the site: 51),

— Airways Formation: pilot school, with an air transport arm that covers all the training needed to join an airline, and an instructors arm preparing for all the instructor qualifications laid down by law (number of staff at the site: 11).

(646) In total, according to France, the industrial hub generated 680 civilian jobs in 2012, to which over 3 000 indirect jobs generated by the airport's activity can be added.

(647) France also indicates that, in order to compensate for the closure of the airbase, it was decided to create a business zone of over 140 ha right next to Nîmes airport, at the heart of an economic area of over 500 ha. Apparently, 85 ha were made available for a business cluster focusing on risk management and ecoconstruction, to complement the existing aviation maintenance and service activities. This business cluster, adjacent to Nîmes airport's industrial hub, was seemingly the first one in Languedoc-Roussillon's second largest town and forms one of its main regional hubs. It apparently plays host to 100 undertakings providing 2 000 jobs.

(648) The aid in question therefore made a significant contribution to local economic development.

([204]) Annex 11.0.5 to France's letter of 27 February 2012.
([205]) Excluding investments, such as property purchases.
([206]) 1 400 jobs at the airbase and 800 jobs created by 20 undertakings present at the airport site.

(649) However, according to the new Guidelines, where an airport is located in the same catchment area as another airport with spare capacity, the business plan, based on sound passenger and freight traffic forecasts, must identify the likely effect on the traffic of the other airport located in that catchment area ([207]). It is clear from the comments made by France in this regard that the CCI-Airport and VTAN expected that the Nîmes traffic would not have a significant impact on the traffic observed at Marseille, Avignon and Montpellier airports. In particular, the CCI took the view that these three airports were not located in the Nîmes catchment area. It can therefore be concluded that the likely effect of the Nîmes traffic on the neighbouring airports was taken into account.

(650) Although the Commission does not agree with the Operators about the presence of different catchment areas, it considers that the impact of the aid in question on the neighbouring airports was not such as to offset the contribution of the aid to the objective of common interest in question, or to substantially compromise the operating conditions of the neighbouring airports.

7.2.3.2. ***Need for state intervention and appropriateness of the aid as a policy instrument***

(651) The aid paid in the form of repayable advances and operating subsidies was necessary to ensure the economic equilibrium of Nîmes airport's operation, and consequently its continued operation.

(652) Furthermore, according to the new Guidelines, 'Therefore, under present market conditions, smaller airports may have difficulties in ensuring the financing of their operation without public funding' ([208]). The new Guidelines also indicate that airports with up to 700 000 passengers per annum may not be able to cover their operating costs to a large extent. Nîmes airport is indeed a small airport as its traffic did not exceed 320 000 passengers during the 1999-2011 period.

(653) As a result, state intervention to ensure the economic equilibrium of Nîmes airport, and consequently its continued operation, was necessary during the 2000-2011 period.

(654) According to the new Guidelines, it should be examined whether other policy instruments or aid instruments could have been used and would have been less distortive of competition ([209]). As already indicated, the airport recorded a very large operating deficit every year during the 2002-2011 period. In order to keep it operating, it was therefore difficult, in this context, to envisage any instruments other than non-repayable operating subsidies, such as the exceptional operating subsidies, flat-rate contribution and specific public contribution, and interest-free repayable advances without a specific repayment deadline.

7.2.3.3. ***Incentive effect and proportionality of the aid***

(655) According to the new Guidelines, it should be ascertained whether, in the absence of the operating aid, the level of economic activity of the airport would have been significantly reduced and whether, in addition, the aid was limited to the minimum necessary for the aided activity to take place ([210]).

(656) As explained previously, the arrival of the TGV as well as the departure of Air France in 2001, followed two years later by the withdrawal of Air Littoral, caused the number of flights to Nîmes airport to fall dramatically. Combined with the conditions of the agreements signed with Ryanair/AMS from 2002, these factors also seriously eroded the airport's financial situation. As a result, in the absence of support measures intended to finance the airport's operating deficit, its activity would have significantly reduced, if not completely halted.

(657) Furthermore, as explained below, the aid amounts were limited to the minimum necessary.

([207]) New Guidelines, points 114 and 131.
([208]) New Guidelines, point 117.
([209]) New Guidelines, point 120.
([210]) New Guidelines, points 124 and 125.

7.2.3.3.1. **CCI-Airport operating period (2000-2006)**

(658) The operating aid granted to the CCI-Airport was limited to the amounts needed to ensure the airport's financial stability, without going beyond what was necessary. In so far as, without this aid, the CCI-Airport would have recorded a significant operating deficit every year, the airport's activity would have needed to have been considerably reduced, if not completely halted, in order to ensure its financial stability. The aid therefore had an incentive effect within the meaning of point 124 of the new Guidelines.

(659) As a result, with regard to the exceptional operating subsidies received in 2005, France has explained that the CCI's 2005 budget was established on the basis of revenue and cost forecasts taking account of the traffic forecasts and that, given the airport's programme, the 2005 forecasts apparently revealed a financing need of EUR [1-3] million. This need corresponded to the difference between the forecast costs (EUR [4-6] million) and the forecast revenue (EUR [2-4] million).

(660) However, the exceptional operating subsidies received by the CCI-Airport in 2005 totalled only EUR 1,35 million, well below the financing need of EUR [1-3] million. The shortfall of approximately EUR [600 000-800 000] was made up by the CCI, partly in the form of repayable advances.

(661) Likewise, the exceptional operating subsidy of EUR 200 000 received from the CCI's general arm in 2006 covered only part of the operating deficit. The decision of the CCI's General Meeting of 14 December 2005 in fact shows that this exceptional operating subsidy stemmed from an agreement between the SMAN and the CCI, under which the latter undertook to cover only part of the airport's operating deficit, limited to EUR 200 000 ([211]), with the rest being covered by the SMAN, as the new owner.

(662) The repayable advances granted by the CCI's general arm stemmed from the obligation to present a balanced budget for the airport, which was imposed on the CCI by the concession agreement. The amount of the advances was defined each year when the budget was prepared, in order to ensure its balance. The preparation of budgets for airports managed by chambers of commerce and industry is subject to strict procedures intended to ensure that public contributions used to balance the budget are limited to the minimum necessary.

(663) Accordingly, Circular No 111 of 30 March 1992 laying down the accounting and financial budget rules applicable to chambers of commerce and industry provides for a precise procedure that particularly governs how the general arm of a chamber of commerce and industry must determine the budget for an airport's operation. This Circular in particular stipulates that the chamber of commerce and industry must determine, for the purposes of preparing the budget: (i) the state of operating transactions; (ii) the state of self-financing capacity; and (iii) the state of capital transactions. In addition, a number of documents have to be annexed to the budget proposal for approval (schedule of services provided and inter-organisation contributions, and schedule of employees and wage bills, etc.). The aim of this procedure is particularly to ensure that the budget balances without overcompensation.

(664) Consequently, the amounts of the repayable advances did not exceed what was necessary to finance the CCI-Airport's operating deficit, bearing in mind the exceptional operating subsidies.

(665) As a result, the operating aid received by the CCI-Airport had an incentive effect and was limited to the minimum necessary.

7.2.3.3.2. **VTAN operating period (2007-2011)**

(666) The operating aid granted to VTAN, which involved large amounts, was also necessary to ensure the airport's financial stability. Without this aid, VTAN would have recorded a significant operating deficit and the airport's activity would have needed to have been considerably reduced, if not completely halted.

([211]) Annex 2014-II-32 to France's letter of 25 April 2014.

(667) The flat-rate contribution, as originally determined, was calculated based on a provisional budget drawn up by Veolia Transport. According to this budget, in the 'reference scenario' the flat-rate contribution of EUR [1,2-1,5] million would allow VTAN to achieve net margins [of 0-5 % on average] throughout the term of the public service delegation. At the SMAN's invitation, Veolia Transport also included a 'downturn scenario' corresponding to a reduction in activity, whereby the flat-rate contribution would drop to EUR [1,0-1,3] million. In this scenario, VTAN would achieve net margins [of 0-5 % on average] throughout the term of the public service delegation ([212]).

(668) In the light of this information, the net margins expected by Veolia Transport seem reasonable, and the downturn scenario was included so that these margins would not unduly increase if there were a reduction in activity.

(669) The flat-rate contribution was therefore initially designed to be limited to the minimum necessary to ensure the financial stability of the airport and a reasonable profit for VTAN. Its subsequent amendments followed this logic. As a result, the increase in the flat-rate contribution made by Amendment No 1 corresponded to the unforeseen loss of revenue that had initially been taken into account by Veolia Transport in its previous estimates, whilst the increase resulting from Amendment No 3 corresponded to additional marketing expenditure incurred by VTAN that was not anticipated at the start.

(670) Moreover, VTAN's profit and loss accounts observed *ex post* show that the flat-rate contribution did not exceed the minimum necessary, in that it did not lead to VTAN recording excessive profits. In fact, according to Table 6 in the opening decision, VTAN's net margin was actually negative throughout the 2007-2010 period.

(671) The specific public contribution implemented by Amendment No 4 to the CDSP was calculated based on a provisional budget reflecting VTAN's new operating costs following the closure of the airbase. It was also stipulated that its amount would be readjusted *ex post* according to the results achieved, in order to avoid overpayments.

(672) As a result, the operating aid received by VTAN had an incentive effect and was limited to the minimum necessary.

7.2.3.4. ***Assessment of distortions of competition and effects on trade***

(673) According to the new Guidelines, when assessing the compatibility of operating aid granted before 4 April 2014, the Commission will take account of the distortions of competition and the effects on trade ([213]).

(674) Aid granted to a Union airport can potentially have a negative effect on all Union airports. In fact, all Union airports are in competition with each other to attract airlines, in the context of the intra-Union internal air transport market. In the case of operating aid allowing the airport to remain economically viable, the intensity of this general effect on other airports depends on the volume of activity of the aided airport, which can be expressed in particular by number of passengers, routes and frequencies.

(675) It should be noted in this regard that, during the period in question (2002-2011), Nîmes airport remained a small airport. Its traffic peaked at 320 000 passengers in 2001, with between 130 000 and 300 000 passengers per year in all the other years. During this same period, the scheduled services offered from this airport were limited to Air Littoral's Paris route, which was only operated until 2003, and those routes operated by Ryanair (a maximum of four at the same time), with one flight per day or less, except potentially in the summer when two flights per day may have been available on certain routes, depending on the year. Nîmes airport's volume of activity therefore remained modest. The general effect of the aid granted to this airport on all the other airports was therefore relatively limited.

([212]) Annex 2014-1-1 to France's letter of 19 February 2014.
([213]) New Guidelines, points 131 and 137.

(676) However, the effects of operating aid granted to a given airport on another airport increase if the two airports are close to each other. In particular, when one of the airports is located within the catchment area of the other, the competition between them to attract airlines wanting to serve the region in question is especially intense. Moreover, when there are routes from each of these two airports to the same destination, these airports are in competition to attract passengers wanting to travel to this destination, who have a choice between the two airports for this journey.

(677) Avignon airport lies 68 km from Nîmes airport, but its runway constraints mean that it can only handle private and business flights. It is not therefore in competition with Nîmes airport for scheduled flights. As regards Marseille airport, this is 115 km away, which is 1 hour and 15 minutes' journey by road. It is therefore too far away to suffer too much impact from the aid in question. As indicated previously, Montpellier airport is situated just 63 km from Nîmes airport, which represents a journey time of only 49 minutes by road. In so far as the Commission considers that a distance of less than 100 km and a journey time of less than one hour are criteria allowing the catchment area of an airport to be defined as a first approximation, Montpellier airport is *a priori* situated within the catchment area of Nîmes airport. Moreover, certain routes operated from Montpellier have the same destination as certain routes from Nîmes airport. This is particularly the case with the routes to Brussels and London, which are offered from both airports.

(678) In this respect, France considers that the catchment area of an airport is defined using two criteria, namely: (i) length of the journey; and (ii) cost of the journey for airports dominated by low-cost traffic, such as Nîmes airport. As a result, France considers that a regional airport's catchment area is limited to those airports that can be reached by car within a maximum of 60 minutes ([214]). According to France, 'Lastly, as regards Montpellier airport, although the above information tends to place it in the same catchment area as Nîmes airport due to the journey time of less than 60 minutes and the cost of the return journey not exceeding EUR 20, it should, however, be stressed that the Ryanair routes from Montpellier airport, which currently number four, meet a tourist demand that is situated more to the west than to the east of the airport (the route to Hahn is an example of this, even though Ryanair has withdrawn its routes to Germany from Marseille) and that Nîmes airport covers a different catchment area from part of Montpellier airport's catchment area (in particular the Cévennes, Uzège and the northeast of Gard/south of the Ardèche in the Rhône valley). It therefore has a particular catchment area. It should also be noted that 51 % of low-cost passengers travel less than 50 km from their airport'.

(679) These factors are indeed likely to mitigate the impact on Montpellier airport of the operating aid received by Nîmes airport. Added to this is the fact that, throughout the period in question, Montpellier airport handled much more traffic than Nîmes airport. In fact, its traffic fluctuated between 1,2 million and 1,6 million passengers per year. The aid received by Nîmes airport, which is around six times smaller, could have had, at most, only a limited impact on Montpellier airport. Lastly, the journey time between the two airports, which is less than one hour but almost 50 minutes, is also a factor likely to mitigate the impact of the aid in question on Montpellier airport.

(680) As a result, the operating aid in question had a limited impact on the airports neighbouring Nîmes airport.

(681) Taking into account all these positive and negative effects of the aid in question, the Commission takes the view that this aid did not affect trade to an extent contrary to the common interest.

(682) In the light of the information set out above regarding the impact of the aid in question on competition and trade, and given the important contribution of this aid to the economic development of the area in which Nîmes airport is located, particularly due to its beneficial impact on local tourism and the industrial hub present at the airport site, the Commission considers that the aid in question did not affect competition and trade to an extent contrary to the common interest.

([214]) France's comments on the opening decision, p. 35.

7.2.3.5. ***Conclusion on the compatibility of the aid granted to the CCI-Airport and VTAN***

(683) In the light of the above, the exceptional operating subsidies, repayable advances, flat-rate contribution, as established by the initial version of the CDSP and increased by Amendments Nos 1 and 3, and specific public contribution constitute aid compatible with the internal market within the meaning of Article 107(3)(c) TFEU.

(684) This conclusion is based on the specific criteria set out in the new Guidelines for assessing the compatibility of operating aid granted to airports before 4 April 2014. It is without prejudice to any assessment of any future aid to Nîmes airport that the Commission may be required to make in the future based on the rules laid down by the new Guidelines for aid granted after 4 April 2014.

8. **RECOVERY**

(685) The Commission has found that Ryanair/AMS benefited from unlawful aid that was incompatible with the internal market. According to settled case-law of the Court of Justice, when the Commission has found that aid is incompatible with the internal market, it is competent to decide that the Member State concerned must abolish or alter it ([215]). According to Article 14 of Regulation (EC) No 659/1999 'Where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary (hereinafter referred to as a "recovery decision"). The Commission shall not require recovery of the aid if this would be contrary to a general principle of Community law'.

(686) According to settled case-law of the Court of Justice, where unlawful aid is regarded by the Commission as incompatible with the internal market, the purpose of the obligation imposed on the state is to re-establish the previously existing situation ([216]). In this respect, the Court of Justice considers that the purpose is achieved when beneficiaries have repaid the amounts granted by way of unlawful aid, thus forfeiting the advantage that they enjoyed over competitors. In this way, the situation prior to payment of the aid is restored ([217]).

(687) In the present case, it appears that no general principle of Union law prevents recovery of the unlawful aid identified in this Decision. In particular, neither France nor the interested third parties have presented any arguments to that effect.

(688) France must therefore take all necessary measures to recover from Ryanair/AMS the unlawful aid granted through the agreements in question.

(689) The aid amounts resulting from the agreements signed with the CCI must be repaid to the latter. The aid amounts resulting from the agreements signed with VTAN must be repaid to the SMAN given that, as previously shown, the state resources used to finance the advantages resulting from the agreements in question came from the SMAN via the operating subsidies paid to VTAN.

([215]) Judgment in *Commission* v *Germany*, 70/72, EU:C:1973:87, paragraph 13.
([216]) Judgment in *Spain* v *Commission*, C-278/92, C-279/92 and C-280/92, EU:C:1994:325, paragraph 75.
([217]) Judgment in *Belgium* v *Commission*, C-75/97, EU:C:1999:311, paragraphs 64-65.

(690) The aid amounts to be recovered for each agreement must be determined as follows. Each transaction under review (consisting, where applicable, of an airport services agreement and a marketing services agreement) must be regarded as having given rise to aid amounts calculated for each year that the agreements forming the transaction applied, or for each period for which the projected incremental flows were calculated ([218]). Each of these amounts is calculated using the negative part of the projected incremental flow (revenues less costs) at the time when the transaction was concluded, as shown in Tables 7 to 16. These amounts in fact correspond to the sums that should be deducted each year from the amount for the marketing services (or that should be added to the airport charges and ground handling charges invoiced to the airlines) so that the net present value of the agreement is positive, in other words so that this complies with the MEO principle.

(691) In order to take account of the effective advantage received by Ryanair/AMS under the agreements, the amounts referred to in the above recital may be adjusted, using evidence provided by France, according to (i) the difference between, on the one hand, the actual payments, as determined *ex post*, that were made by Ryanair for the landing charge, passenger charge and ground handling services under the airport services agreement ([219]) and, on the other hand, the (*ex ante*) projected flows corresponding to these income items, as indicated in Tables 7 to 16; (ii) the difference between, on the one hand, the actual marketing payments, as determined *ex post*, that were made to Ryanair or AMS under the marketing services agreement and, on the other hand, the corresponding (*ex ante*) projected marketing costs, as indicated in Tables 7 to 16.

(692) In addition, the Commission considers that the effective advantage received by Ryanair/AMS is limited to the effective term of the agreement in question. In effect, after the termination of each agreement, Ryanair/AMS did not receive any payments under these agreements and did not benefit from access to the airport infrastructure and ground handling services under these agreements. Consequently, the aid amounts calculated as indicated above and associated with a given agreement are reduced to zero for the periods during which the agreement effectively ceased to apply (particularly due to early termination by mutual agreement between the parties).

(693) As a result, the aid amount to be recovered from Ryanair/AMS for certain agreements that did not run to term must be reduced to zero for the period from the effective expiry date of the agreement to the expiry date stipulated when the agreement was signed.

(694) Table 17 below gives information on the amounts to be used to calculate the amounts to be recovered. These amounts consist of the negative parts of the incremental flows (revenues less costs) established by applying the MEO test, with reductions for the Ryanair/AMS agreements for the years that these agreements did not run to term.

([218]) As explained when assessing the existence of an economic advantage in the various agreements, the aid stems from bidirectional flows between the airport operator and Ryanair or Ryanair/AMS. These flows have different frequencies, with some being continuous flows or having payment frequencies that cannot be precisely predicted when the agreements are signed. The same is true for payment of the airport charges. However, when assessing the existence of an economic advantage, it is the projected incremental flows that count. It is clear from the VTAN business plan and from the proposed reconstructions of the incremental business plans provided by France that the practice of a reasonable MEO would be, as a general rule, to establish the projected incremental flows associated with the various agreements on an annual basis. It is therefore logical for the aid amounts resulting from the various agreements also to be established, as a general rule, on an annual basis. These aid amounts in fact correspond to the sums that, during negotiation of the various agreements, an MEO would have asked Ryanair/AMS to pay it each year in addition to the airport charges and ground handling charges, all else being equal (particularly the marketing payments), in order to make the agreement profitable. However, for certain agreements, it is more logical to calculate the projected incremental flows by IATA season (winter/summer) or for periods other than calendar years, due to certain particular features of these agreements such as, for example, variations in frequencies during summer seasons. That is why, for certain agreements, the amounts are calculated on an annual basis, whereas for others they are calculated for periods other than full calendar years.

([219]) By taking into account, where applicable, any 'financial incentives' stipulated in the airport services agreements, which involved repaying to Ryanair part of the payments made by the latter under these agreements when certain traffic targets were met.

Table 17

Information on the amounts to be recovered ([1])

Indicative amounts (in EUR)	Period during which the aid amount was received																
	2002	2003	2004	2004 (summer season)	2005	2006	2007 (January to October)	2007-2008 (winter season)	2008 (summer season)	2008-2009 (winter season)	2009 (summer season)	2009-2010 (winter season)	2010	2010 (summer season)	2010-2011 (winter season)	2011 (summer season)	2011 (winter season up to 31.12)
CCI period:																	
correspondence exchanged between the end of 2001 and the beginning of 2002	[0-50 000]	[0-50 000]	[0-50 000]														
correspondence exchanged in 2004				[100 000-150 000]													
2005 agreements					[150 000-200 000]	[250 000-300 000]											
VTAN period:																	
agreements of 2 January 2007							[700 000-750 000]										
amendment of 1 August 2007								[150 000-200 000]									
agreements of 1 November 2007								[700 000-750 000]	[800 000-850 000]								
agreements of 27 August 2008										[450 000-500 000]	[500 000-550 000]						

Indicative amounts (in EUR)	Period during which the aid amount was received																
	2002	2003	2004	2004 (summer season)	2005	2006	2007 (January to October)	2007-2008 (winter season)	2008 (summer season)	2008-2009 (winter season)	2009 (summer season)	2009-2010 (winter season)	2010	2010 (summer season)	2010-2011 (winter season)	2011 (summer season)	2011 (winter season up to 31.12)
agreements of 25 August 2009												[450 000-500 000]		[500 000-550 000]	[450 000-500 000]	[450 000-500 000]	[150 000-200 000]
amendment of 18 August 2010													[0-50 000]				
amendment of 30 November 2010																[0-50 000]	
total	**[0-50 000]**	**[0-50 000]**	**[0-50 000]**	**[100 000-150 000]**	**[150 000-200 000]**	**[250 000-300 000]**	**[700 000-750 000]**	**[850 000-900 000]**	**[800 000-850 000]**	**[450 000-500 000]**	**[500 000-550 000]**	**[450 000-500 000]**	**[0-50 000]**	**[500 000-550 000]**	**[450 000-500 000]**	**[500 000-550 000]**	**[150 000-200 000]**

([1]) In this table, when reference is made to a year without any further clarification (for example '2002'), this means the full calendar year. With regard to the calculation of recovery interest, the aid is regarded as having been granted on the final day of each of the periods mentioned in the various columns. See recital 699.

(695) As explained in Section 7.1.1.2.3, the Commission considers that Ryanair and AMS form a single economic entity, and that the marketing services agreements and airport services agreements that were signed at the same time must be regarded as forming a single transaction between this entity and, as applicable, the CCI or VTAN. Consequently, the Commission considers that Ryanair and AMS are jointly and severally responsible for repaying all the aid received through the agreements signed from 2005 to 2010, with an indicative principal amount of EUR [5 000 000 -7 000 000]. With regard to the agreements signed before 2005, as these were signed by the CCI with Ryanair alone, the latter is solely responsible for repaying the aid resulting from these agreements, with an indicative principal amount of EUR [150 000-300 000].

(696) The French authorities must recover the amounts indicated above within four months of the date of notification of this Decision.

(697) In this regard, the French authorities must also add the amount of recovery interest to the aid amount to be recovered, which shall be calculated from the date on which the aid in question was put at the disposal of the undertaking, namely on each effective date of granting of the aid, until the date of its effective recovery ([220]), in accordance with Chapter V of Commission Regulation (EC) No 794/2004 ([221]). Given that, in the present case, the flows making up this aid are complex and stem from several dates during the year, and are even continuous for certain categories of revenue, the Commission takes the view that it is acceptable, in calculating the recovery interest, to consider that the moment of payment of the aid amounts concerned is the final day of the period for which the amount has been calculated (for example, 31 December if the period in question is a calendar year, or 31 October if the period in question extends from 1 January to 31 October of a given year). In this regard, by choosing the final day of the period in question, the Commission is taking the approach that is most favourable for the beneficiaries.

(698) In accordance with settled case-law of the Court of Justice, if a Member State encounters unforeseen and unforeseeable difficulties or perceives consequences overlooked by the Commission, it may submit those problems for consideration by the Commission, together with proposals for suitable amendments. In such a case, the Commission and the Member State concerned must work together in good faith with a view to overcoming the difficulties whilst fully observing the provisions ([222]) of the TFEU.

(699) The Commission therefore asks France to submit to it any problem that it may encounter in implementing this Decision,

HAS ADOPTED THIS DECISION:

Article 1

1. The following measures, which contain State aid unlawfully granted by France to Ryanair in breach of Article 108(3) of the Treaty on the Functioning of the European Union, are incompatible with the internal market:

(a) the transaction amending the agreement signed on 11 April 2000 between the Nîmes-Uzès-Le Vigan Chamber of Commerce and Industry and Ryanair, consisting of the correspondence exchanged between the Nîmes-Uzès-Le Vigan Chamber of Commerce and Industry and Ryanair dated 28 November 2001, 11, 18, 21 and 24 December 2001, and 2, 5 and 15 February 2002;

(b) the transaction amending the agreement signed on 11 April 2000 between the Nîmes-Uzès-Le Vigan Chamber of Commerce and Industry and Ryanair, consisting of the correspondence exchanged between the Nîmes-Uzès-Le Vigan Chamber of Commerce and Industry and Ryanair dated 10 and 16 March 2004.

([220]) See Article 14(2) of Regulation (EC) No 659/1999 (op. cit.).
([221]) Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 140, 30.4.2004, p. 1).
([222]) See judgment in *Commission* v *Germany*, C-94/87, EU:C:1989:46, paragraph 9 and judgment in *Commission* v *Italy*, C-348/93, EU: C:1995:95, paragraph 17.

2. The following measures, which contain State aid unlawfully granted by France jointly to Ryanair and Airport Marketing Services in breach of Article 108(3) of the Treaty on the Functioning of the European Union, are incompatible with the internal market:

(a) the airport services agreement signed on 10 October 2005 between the Nîmes-Uzès-Le Vigan Chamber of Commerce and Industry and Ryanair and the marketing services agreement signed on the same date between the Nîmes-Uzès-Le Vigan Chamber of Commerce and Industry and Airport Marketing Services;

(b) the airport services agreement signed on 2 January 2007 between Veolia Transport Aéroport de Nîmes and Ryanair and the marketing services agreement signed on the same date between Veolia Transport Aéroport de Nîmes and Airport Marketing Services;

(c) the amendment of 1 August 2007 to the marketing services agreement signed on 2 January 2007 between Veolia Transport Aéroport de Nîmes and Airport Marketing Services;

(d) the airport services agreement signed on 1 November 2007 between Veolia Transport Aéroport de Nîmes and Ryanair and the marketing services agreement signed on the same date between Veolia Transport Aéroport de Nîmes and Airport Marketing Services;

(e) the airport services agreement signed on 27 August 2008 between Veolia Transport Aéroport de Nîmes and Ryanair and the marketing services agreement signed on the same date between Veolia Transport Aéroport de Nîmes and Airport Marketing Services;

(f) the amendment of 25 August 2009 to the airport services agreement signed on 27 August 2008 between Veolia Transport Aéroport de Nîmes and Ryanair and the amendment of 25 August 2009 to the marketing services agreement signed on 27 August 2008 between Veolia Transport Aéroport de Nîmes and Airport Marketing Services;

(g) the amendment of 18 August 2010 to the marketing services agreement signed on 27 August 2008 between Veolia Transport Aéroport de Nîmes and Airport Marketing Services;

(h) the amendment of 30 November 2010 to the marketing services agreement signed on 27 August 2008 between Veolia Transport Aéroport de Nîmes and Airport Marketing Services.

Article 2

1. The agreement signed on 11 April 2000 between Ryanair and the Nîmes-Uzès-Le Vigan Chamber of Commerce and Industry does not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

2. The amendment of 30 January 2006 to the marketing services agreement signed on 10 October 2005 between the Nîmes-Uzès-Le Vigan Chamber of Commerce and Industry and Airport Marketing Services does not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

3. The amendment of 17 October 2006 to the marketing services agreement signed on 10 October 2005 between the Nîmes-Uzès-Le Vigan Chamber of Commerce and Industry and Airport Marketing Services does not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

Article 3

1. The repayable advances granted by the general arm of the Nîmes-Uzès-Le Vigan Chamber of Commerce and Industry to its airport arm from 2002 to 2006 constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union. This State aid was unlawfully granted by France in breach of Article 108(3) of the Treaty on the Functioning of the European Union.

2. The exceptional operating subsidies granted by various local authorities and the general arm of the Nîmes-Uzès-Le Vigan Chamber of Commerce and Industry to the airport arm of the Nîmes-Uzès-Le Vigan Chamber of Commerce and Industry from 2005 to 2006 constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union. This State aid was unlawfully granted by France in breach of Article 108(3) of the Treaty on the Functioning of the European Union.

3. The flat-rate contribution, as established for the benefit of Veolia Transport Aéroport de Nîmes by the public service delegation agreement signed on 8 December 2006 by the Syndicat mixte pour l'aménagement et le développement de l'aéroport de Nîmes-Alès-Camargue-Cévennes and Veolia Transport and as increased by Amendments Nos 1 and 3 to this agreement, constitutes State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union. This State aid was unlawfully granted by France in breach of Article 108(3) of the Treaty on the Functioning of the European Union.

4. The specific public contribution, as established for the benefit of Veolia Transport Aéroport de Nîmes by Amendment No 4 to the agreement referred to in paragraph 3, constitutes State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union. This State aid was unlawfully granted by France in breach of Article 108(3) of the Treaty on the Functioning of the European Union.

5. Amendment No 2 to the agreement referred to in paragraph 3 does not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

6. The equipment subsidies established by Amendment No 4 to the agreement referred to in paragraph 3 do not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

7. The subsidies granted to the Nîmes-Uzès-Le Vigan Chamber of Commerce and Industry and to Veolia Transport Aéroport de Nîmes under the national system for financing sovereign tasks in French airports do not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

8. The State aid referred to in paragraphs 1 to 4 of this Article is compatible with the internal market on the basis of Article 107(3)(c) of the Treaty on the Functioning of the European Union.

Article 4

1. France shall recover the State aid referred to in Article 1 from the beneficiaries. Ryanair and Airport Marketing Services are jointly and severally responsible for repaying the aid referred to in Article 1(2).

2. The amounts to be recovered shall bear interest from the date on which they were placed at the disposal of the beneficiaries to the date of their effective recovery.

3. The interest shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004 and Commission Regulation (EC) No 271/2008 ([223]) amending Regulation (EC) No 794/2004.

4. France shall cancel all outstanding payments of the aid referred to in Article 1 with effect from the date of adoption of this Decision.

Article 5

1. Recovery of the aid referred to in Article 1 shall be immediate and effective.

2. France shall ensure that this Decision is implemented within four months of the date of its notification.

Article 6

1. Within two months of notification of this Decision, France shall communicate the following information to the Commission:

(a) aid amounts to be recovered under Article 4;

([223]) Commission Regulation (EC) No 271/2008 of 30 January 2008 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 82, 25.3.2008, p. 1).

(b) calculation of recovery interest;

(c) a detailed description of the measures already taken and planned for the purpose of complying with this Decision;

(d) documents proving that the beneficiaries have been ordered to repay the aid.

2. France shall keep the Commission regularly informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 1 has been completed. At the Commission's request, it shall immediately submit information on the measures already taken and planned for the purpose of complying with this Decision. It shall also provide detailed information concerning the aid amounts and interest already recovered from the beneficiaries.

Article 7

This Decision is addressed to the French Republic.

Done at Brussels, 23 July 2014.

For the Commission

Joaquín ALMUNIA

Vice-President